

PrescriptionSchemeIndividualsAndAgencies2017

**Prescription Scheme - Individuals and Agencies 2017**

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This document is being prepared for submission to the Environmental Protection Agency as the EPA investigates the prescription scheme created by the State of Washington Department of Fish & Wildlife to repeatedly violate the Federal Clean Water Act. The EPA is ostensibly in the process of obtaining statements or narratives from individuals who are entangled with the prescription scheme. This document provides facts and narratives dealing with individuals and agencies that have become involved with the prescription scheme within the Yakima area. Since 2003, significant discovery has occurred, shedding light on repeated Clean Water Act violations involving Shaw Creek and involving Wide Hollow Creek. Ongoing discovery may result in the disclosure of new facts and new insights pertaining to the agencies and individuals who have become involved with violations of the Federal Clean Water Act. The information within this document is being provided to the EPA for purposes of facilitating the investigation of the prescription scheme used to repeatedly violate the Federal Clean Water Act. The EPA, of course, must independently confirm facts as Federal officials proceed with their investigation.

**Prescription scheme used to repeatedly violate the Federal Clean Water Act:**

The Washington Department of Fish & Wildlife has created a scheme where they issue unlawful “prescriptions” that are used to violate the Federal Clean Water Act within the Yakima Area. Letters created by WDFW officials use the term “prescription” to describe the documents they create, demonstrating pre-planned environmental crimes involving Shaw Creek and Wide Hollow Creek. A fish-biologist, Mr. Eric Bartrand, has repeatedly created unlawful prescriptions, describing step-by-step procedures to violate the Federal

Clean Water Act. Use of the prescription scheme appears to be largely secretive, corrupt, and unlawful.

In 2012, Mr. Eric Bartrand crafted a prescription for Yakima County (Mr. Jeff Legg), acting as agent for a commercial developer (Mr. Greg Bainter; Bainter Group LLC). While Yakima County produced falsified project materials, describing a Shaw Creek habitat improvement project, a secretive plan was created by Yakima County to preemptively destroy Shaw Creek and preemptively destroy Shaw Creek critical areas. While members of the public were provided falsified project descriptions, secretly Yakima County informed Mr. Eric Bartrand and the WDFW of the plans to destroy Shaw Creek. Subsequently, Mr. Bartrand created a prescription that recorded the step-by-step instructions to unlawfully relocate Shaw Creek into a man-made ditch and to illegally fill the jurisdictional watercourse with excavation spoils.

The 2012 Shaw Creek Clean Water Act violations required the close cooperation between the private developer (Bainter), the agent (Yakima County), the WDFW (Mr. Eric Bartrand), and the City of Yakima (Mr. Jeff Peters). Agencies and individuals ensured that members of the public were only informed about a falsified Shaw Creek habitat improvement project. Secretly, the prescription scheme was used to pre-plan violations of the Federal Clean Water Act. The Shaw Creek project of May, 2012 caused the unlawful relocation of Shaw Creek into a man-made ditch. In addition, jurisdictional wetlands were preemptively filled in violation of the Federal Clean Water Act. Filling of the charted Shaw Creek floodway occurred. And the conveyance capacity of the man-made ditch is insufficient for normal flows of water. The Shaw Creek Clean Water Act violations of 2012 caused the flood-event of February 21, 2017 where the Cottonwood Grove subdivision was flooded.

By using the prescription scheme in 2012, well-documented Shaw Creek Clean Water Act violations occurred. Following the 2012 Clean Water Act violations, a scheme to prevent enforcement of the Federal Clean Water Act has occurred for over five years. Numerous entities and numerous individuals have participated in the scheme to prevent enforcement of the Federal Clean Water Act by unlawfully indicating that the location of

the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that the location of the man-made ditch is NOT the location of the jurisdictional Shaw Creek watercourse.

Mr. Bainter (Bainter Group LLC) created a scheme to achieve wealth resulting from Shaw Creek Clean Water Act violations of 2012. According to Mr. Bainter, the filled Shaw Creek watercourse and filled jurisdictional wetlands became B-2 commercial land that are now ripe for commercial development. According to Yakima County, they could also achieve wealth resulting from Shaw Creek Clean Water Act violations of 2012. By pre-planning jurisdictional wetland destruction, Yakima County indicated during the NEPA process and during the SEPA process (i.e. Shaw Creek flood control project) that no wetlands remained along the course of Shaw Creek. So, Yakima County obtained a \$2.7 million FEMA grant and a \$498,000 Centennial grant after preemptively destroying jurisdictional wetlands (i.e. a violation of the Federal Clean Water Act). So both Bainter and Yakima County participated in schemes to achieve wealth resulting from violations of the Federal Clean Water Act.

The WDFW repeatedly has crafted prescriptions used to violate the Federal Clean Water Act. Mr. Bartrand (fish-biologist; WDFW) crafted an unlawful prescription for Mr. Bainter and Yakima County in 2012. In 2013, Mr. Bartrand (WDFW) crafted an unlawful prescription used by Mr. Steve Abarta to dredge Shaw Creek, unlawfully disrupt the hyporheic zone of the watercourse, and lower groundwater levels near Shaw Creek. The Abarta project of 2013 involved new violations of the Federal Clean Water Act. In 2014, Mr. Bartrand (WDFW) crafted an unlawful prescription for Ms. Jeanna Paluzzi (Yakima County) to dredge Wide Hollow Creek at S. 96<sup>th</sup> Ave. In addition, the 2014 project involved the unlawful excavation of new channels for Wide Hollow Creek. In 2015, Mr. Bartrand (WDFW) crafted a new prescription for Mr. Bainter describing a planned, illegal damming and diversion of Shaw Creek. In 2016, Mr. Cliff Bennett (Yakima County) obtained an unlawful prescription from Mr. Bartrand (WDFW) to dredge Wide Hollow Creek (between S. 80<sup>th</sup> Ave. and S. 96<sup>th</sup> Avenue).

Mr. Eric Bartrand and the WDFW do not possess the legal authority to issue “prescriptions” used to violate the Federal Clean Water Act. At times, the prescription scheme is used in association with flagrant violations of the State Growth Management Act, where members of the public are knowingly misinformed about a project while secretive plans are created to perform violations of the Federal Clean Water Act. The prescription scheme has been used by Yakima County officials (Legg, Paluzzi, Bennett) and private individuals (Bainter, Abarta) to violate the Clean Water Act. In all known cases, Mr. Eric Bartrand has been involved at the Washington Department of Fish & Wildlife.

As a result of the illegal prescription scheme, Mr. Bartrand (WDFW) has caused the cumulative environmental destruction of Shaw Creek and Wide Hollow Creek. The 2012 Shaw Creek Clean Water Act violations directly caused the subsequent flooding of the Cottonwood Grove subdivision. Yakima County and the WDFW have repeatedly utilized the prescription scheme since 2012. And new flood control project plans involve newly planned violations of the Federal Clean Water Act. Secretively flood control project elements include the following:

- Dewatering of Wide Hollow Creek by means of a retention pond.
- Relocation of Wide Hollow Creek into a roadside ditch.
- Relocation of Wide Hollow Creek within West Valley Park.
- Destruction of jurisdictional wetlands without sufficient wetland studies.
- Preemptive destruction of Shaw Creek wetlands in advance of planned development by Yakima County.

Over time, numerous agencies and numerous individuals have become entangled with the scheme to prevent enforcement of the Federal Clean Water Act. And these agencies and individuals appear to have become emboldened to destroy greater portions of Shaw Creek and destroy greater portions of Wide Hollow Creek as a result of proposed flood control project elements.

The Environmental Protection Agency now is tasked with independently reviewing the evidence. Hopefully, the EPA will take meaningful action to dismantle the corrupt, secretive, and unlawful prescription scheme that is used to repeatedly violate the Federal Clean Water Act.

*Agencies and entities involved with the prescription scheme:*

**Washington Department of Fish & Wildlife**

At the Washington Department of Fish & Wildlife, Mr. Eric Bartrand (fish-biologist) has repeatedly issued prescriptions used to violate the Federal Clean Water Act. The immediate superior to Mr. Eric Bartrand is Mr. Perry Harvester who is fully-informed about the prescription scheme. Likely, the Region 3 director of the WDFW, Mr. Livingston is also aware of the prescription scheme used to pre-plan and implement violation of the Federal Clean Water Act.

## **Yakima County**

At Yakima County, several officials have used the prescription scheme to pre-plan and implement violations of the Federal Clean Water Act. Mr. Jeff Legg, Mr. Cliff Bennett, Ms. Jeanna Paluzzi, Mr. Troy Havens and Mr. Terry Keenhan appear to be primarily involved with use of the prescription scheme.

- Mr. Jeff Legg (Yakima County) – Mr. Jeff Legg and Yakima County served as agent for the Shaw Creek project of 2012 where Clean Water Act violations were pre-planned and implemented. Mr. Legg and Yakima County created falsified project application materials, knowingly misinformed the public, and caused the destruction of Shaw Creek and destruction of jurisdictional Shaw Creek wetlands. Mr. Legg and Yakima County caused the subsequent flooding of the Cottonwood Grove subdivision due to insufficient conveyance capacity of the man-made ditch. Mr. Legg worked with Mr. Bartrand to obtain the illegal prescription, detailing the step-by-step directions to perform violations of the Federal Clean Water Act. At the same time, Mr. Legg and Mr. Cliff Bennett were working on the Shaw Creek flood project for Yakima County; the preemptive destruction of the Shaw Creek environment facilitated the Yakima County flood control project plans.
- Mr. Cliff Bennett (Yakima County) – Mr. Cliff Bennett has been in charge of the Yakima County flood control project since 2011 when FEMA awarded a \$2.7 million grant for the Shaw Creek flood control project. Mr. Bennett and Mr. Legg were the two Yakima County officials working on the Shaw Creek project in 2012 when Yakima County participated in the Shaw Creek Clean Water Act violations. In 2016, Mr. Bennett used the unlawful prescription scheme to pre-plan Clean Water Act violations involving Wide Hollow Creek (i.e. unlawful dredging).
- Ms. Jeanna Paluzzi (Yakima County) – Ms. Jeanna Paluzzi used the prescription scheme in 2014 to perform unlawful dredging of the main channel of Wide Hollow Creek. Also, unlawful finger channel construction occurred along Wide Hollow Creek and the Riparian Habitat Zone was illegally destroyed at S. 96<sup>th</sup>

Avenue. In violation of FIFRA, imazapyr was used to poison all trees along the jurisdictional watercourse. In violation of the Clean Water Act and in violation of NFIP regulations, a lawful COE 404 Fill & Dredge permit was not obtained.

- Mr. Troy Havens (Yakima County) – Mr. Troy Havens produced engineering drawings for the Shaw Creek and Wide Hollow Creek flood control project; these materials are false and misleading. Mr. Troy Havens unlawfully indicated that a man-made ditch under unlawful use (Bainter site) is the location of the jurisdictional Shaw Creek watercourse. Profiles of Shaw Creek appear to be falsified where the width of the new watercourse is simply false as noted within engineering drawings. Mr. Havens knowingly submitted the falsified site plan materials to the USACE. Ostensibly, Mr. Havens (Yakima County) is attempting to dupe USACE officials into believing that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. By producing falsified engineering drawings, Mr. Havens has participated in the scheme to prevent enforcement of the Federal Clean Water Act.
- Mr. Terry Keenhan (Yakima County) – Mr. Keenhan has been named as the “applicant” for several of the Yakima County projects involving pre-planned violations of the Federal Clean Water Act. Mr. Keenhan is the department supervisor, in-charge of Mr. Legg, Mr. Bennett, and Ms. Paluzzi. Mr. Keenhan unlawfully and incorrectly stated that the Shaw Creek Clean Water Act violations of 2012 would not increase the risk of flooding to the adjacent community. In truth, the Shaw Creek Clean Water Act violations of 2012 caused the February 21, 2017 flood-event of the Cottonwood Grove subdivision.

Other individuals at Yakima County appear to be involved with the scheme to prevent enforcement of the Federal Clean Water Act following the 2012 Shaw Creek environmental crimes. Mr. Byron Gumz, Mr. Thomas Carroll, and Mr. Lynn Deitrick all have played significant roles with the scheme to prevent enforcement of the Federal Clean Water Act by knowingly introducing the October 2015 wetland report into project files for SEP2016-00029 (flood control project) at the very end of the commenting windows.



### **City of Yakima**

At the City of Yakima, Mr. Jeff Peters was the official who ensured that members of the public were misinformed in 2012. While Mr. Peters was repeatedly informed in advance that violations of the Clean Water Act would occur at the Bainter site of Shaw Creek, Mr. Peters prevented members of the public from learning about planned violations of the CWA. In 2017, Mr. Jeff Peters was terminated from employment at the City of Yakima; likely his termination was a direct result of violations of Federal law. No other City of Yakima officials appear to be significantly entangled with violations of the Federal Clean Water Act. However, the City of Yakima appears to have created an ongoing scheme to prevent enforcement of the Federal Clean Water Act. The City of Yakima scheme requires that City officials accept falsified wetland reports, created for Mr. Bainter. The falsified wetland reports indicate unlawfully that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. The falsified wetland reports have been delivered to Ecology and also delivered to the US Army Corp of Engineers. In essence, the City of Yakima is attempting to dupe Ecology officials and dupe USACE officials into believing that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse.

**Bainter Group LLC**

In 2012, Bainter Group LLC (Mr. Greg Bainter) used the prescription scheme to pre-plan violations of the Federal Clean Water Act. And Shaw Creek was unlawfully relocated into a man-made ditch. The jurisdictional watercourse was filled, the floodway was filled, and jurisdictional wetlands were also filled. The February 21, 2017 flooding of the adjacent community was the direct result of the 2012 Shaw Creek Clean Water Act violations at the Bainter site. While ongoing commercial development was under Superior Court review, Mr. Greg Bainter demonstrated contempt for the rule of law by secretly submitting a second JARPA to the WDFW (Mr. Bartrand). By using the prescription scheme in 2015, Mr. Bainter pre-planned new violations of the Federal Clean Water Act by means of secretly damming and diverting Shaw Creek. Mr. Bainter has participated in an ongoing scheme to prevent enforcement of the Federal Clean Water Act. And Mr. Bainter has participated in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act.

*Other agencies and entities involved with the prescription scheme:*

**Ecology**

At the Department of Ecology, Ms. Catherine Reed is a wetland specialist who has made numerous site visits to Shaw Creek, including the Bainter site. Ms. Catherine Reed was involved with the review of the Shaw Creek project of 2012 and is fully aware that a prescription scheme was used to violate the Federal Clean Water Act. Ms. Catherine Reed knows that jurisdictional Shaw Creek wetlands were illegally filled with excavation spoils in 2012. And Ms. Catherine Reed (Ecology) knows that the man-made ditch under unlawful use is not a critical area and does not possess jurisdictional wetland critical areas. However, Ms. Catherine Reed (Ecology) is facilitating the scheme to prevent enforcement of the Federal Clean Water Act by unlawfully indicating that the location of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. Ms. Catherine Reed (ECY) received the falsified July 2016 wetland report of the Bainter site that unlawfully indicated that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. Subsequently, Ms. Catherine Reed delivered the falsified July 2016 wetland report to the USACE in an effort to dupe USACE officials into believing that the man-made ditch is the location of the jurisdictional Shaw Creek watercourse.

**Widener & Associates**

Mr. Ross Widener, Mrs. Jeanette Widener, Mr. Jason Cade, and other Widener officials are responsible for creating falsified wetland studies involving Shaw Creek and involving Wide Hollow Creek. These falsified wetland studies demonstrated that no jurisdictional wetlands existed at the Bainter site following well-documented violations of the Federal Clean Water Act. These Widener officials unlawfully indicate that the location of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. The man-made ditch is not located within the charted floodway and is not located within the Shaw Creek FEMA 100-year floodplain. Furthermore, Widener officials unlawfully indicate that the entire course of the man-made ditch is a jurisdictional wetland that is under the protection of the Federal Clean Water Act. Widener officials are participating in the scheme to prevent enforcement of the Federal Clean Water Act. Widener officials are participating in the schemes to achieve wealth resulting from violations of the Federal Clean Water Act (Bainter; Yakima County).

**Durant Development Services -- Mr. Thomas Durant:**

Mr. Thomas Durant is a planning consultant and advisor for Mr. Bainter and for Mr. Radke who has provided services since 2003. Mr. Thomas Durant participated in violations of the State Growth Management Act in 2004 by unlawfully substituting a new version of site plan (i.e. exhibit 5) into Zoning Ordinance 14-2004 after conclusion of open-record hearings. The unlawful switching of site plans significantly altered the Bainter commercial site while disallowing commenting by members of the public. In 2014, Mr. Durant participated in the scheme to prevent enforcement of the Federal Clean Water Act by producing Bainter site plans, labeling the man-made ditch under unlawful use as the location of the jurisdictional Shaw Creek watercourse. Mr. Durant also participated in the scheme to achieve wealth resulting from violations of the Federal Clean Water Act. Site plans produced by Mr. Durant indicated that the filled Shaw Creek watercourse and filled Shaw Creek wetlands had become valuable B-2 commercial land, causing Mr. Bainter to gain wealth as a result of Clean Water Act violations. Mr. Durant produced a paper-version of a JARPA in 2014, disseminating copies to members of the public. Secretly, Mr. Durant produced a second JARPA in electronic form, submitted the JARPA to Mr. Eric Bartrand (WDFW), and obtained a secret prescription to illegally dam and divert Shaw Creek at the Bainter site (2015). As such, Mr. Durant utilized the secretive and unlawful prescription scheme to pre-plan violations of the Federal Clean Water Act at the Bainter site.

**Mr. Pat Andreotti:**

Mr. Pat Andreotti is an attorney who also served as a witness during administrative hearings in 2014 when a Bainter sewer project appeal was heard. Mr. Pat Andreotti provided testimony under oath that was false (i.e. aggravated perjury). Mr. Andreotti falsely stated that North Yakima Conservation District personnel planted a 14,000 SF habitat zone at the Bainter site; this was false. Mr. Andreotti falsely stated that a 14,000 SF mass attack of morning glory killed 100% of the plants within the habitat zone at the Bainter site; this was a false statement. Mr. Andreotti falsely stated that Mr. Bainter completed the 2012 habitat improvement project in accordance with issued permits; this statement was false. Mr. Pat Andreotti participated in the scheme to prevent enforcement of the Federal Clean Water Act at the Bainter site of Shaw Creek.

**Mr. Glen Radke:**

Mr. Glen Radke is a property owner within the so-called “Bainter commercial development”. Mr. Radke’s consultant, Mr. Durant, illegally substituted a new version of site plan (i.e. exhibit 5) into the zoning ordinance (ZO 14-2004). Mr. Radke illegally constructed a commercial vehicle repair shop on his land without issuance of lawful permits. Mr. Radke illegally moved commercial traffic across neighboring R-1 residential land before being issued a shut-down order. In 2014, two months prior to environmental studies of Shaw Creek, Mr. Radke illegally excavated and dredged Shaw Creek; photos and testimony affirm these violations of the Federal Clean Water Act at the Radke site of Shaw Creek. Mr. Radke destroyed fish-filled pools. Mr. Radke illegally excavated within jurisdictional wetlands, Mr. Radke destroyed trees within the Shaw Creek Riparian Habitat Zones.

**Supplemental comments (*pertaining to selected individuals involved with the prescription scheme*)**

**Mr. Eric Bartrand (WDFW)**

Mr. Eric Bartrand is a fish-biologist working at Region 3, WDFW (Yakima, WA). Mr. Bartrand is the individual at the WDFW who crafts “prescriptions” to violate the Federal Clean Water Act. The WDFW uses the term “prescription” to characterize documents that involve planned violations of the Federal Clean Water Act. The prescription scheme involves Mr. Eric Bartrand’s creation of an HPA (Hydraulic Project Approval) which is a fish-permit, issued by the WDFW; the HPA fish-permit is nothing more than an authorization to impact fish. As a fish-biologist, Mr. Eric Bartrand does not possess the legal authority to prescribe violations of the Federal Clean Water Act.

Regardless, the content of HPA documents created by Mr. Bartrand record pre-planned violations of the Federal Clean Water Act. In 2012, Mr. Bartrand created an HPA (prescription) recording the pre-planned relocation of Shaw Creek into a man-made ditch and the filling of the jurisdictional Shaw Creek watercourse with excavation spoils. In addition, jurisdictional Shaw Creek wetlands were filled. In 2013, Mr. Bartrand prescribed the dredging of Shaw Creek at the Abarta site; Mr. Bartrand does not possess any legal authority to allow for the dredging of a watercourse. In 2014, Mr. Bartrand created an HPA involving the dredging of Wide Hollow Creek at S. 96<sup>th</sup> Ave. In 2015, Mr. Bartrand prescribed the damming, diversion, and dewatering of Shaw Creek at the Bainter site. In 2016, Mr. Bartrand prescribed the dredging of Wide Hollow Creek between S. 80<sup>th</sup> Ave. and S. 96<sup>th</sup> Ave. Repeatedly, Mr. Bartrand prescribes violations of the Federal Clean Water Act.

The prescribed violations of the Federal Clean Water Act, at times, are secretive. For example, members of the public were informed about a proposed habitat improvement project at the Bainter site in 2012; secretly, Mr. Bartrand and others pre-planned the



destruction of the habitat of Shaw Creek. The prescription scheme involving Mr. Bartrand (WDFW) requires the cooperation of City of Yakima officials and Yakima County officials.

**Mr. Greg Bainter**

Mr. Greg Bainter has been involved with the issuance of two unlawful prescriptions, crafted by Mr. Eric Bartrand (WDFW). Mr. Greg Bainter is a commercial developer with property abutting the jurisdictional Shaw Creek watercourse. In addition, jurisdictional wetlands have been identified, studied, and delineated at the Bainter site. In 2012, FEMA formally adopted and approved the regulatory Shaw Creek FEMA 100-year Floodplain maps that include the Bainter site of Shaw Creek.

In 2004, Mr. Bainter received a notice of violation, issued for unlawful dredging of Shaw Creek without permits. When Mr. Bainter received the notice of violation, he threatened to kill the government official. Mr. Bainter was mandated to restore the site by removing fill from along the shores of the jurisdictional Shaw Creek watercourse (2004). However, a full Clean Water Act investigation and enforcement did not occur in 2004 at the Bainter site.

In 2011, Yakima County assumed the role of “agent” for Mr. Bainter, when Mr. Bainter proposed development involving the Shaw Creek watercourse and jurisdictional wetlands. Significant conflicts of interest existed for Yakima County when performing the role of “agent” for Mr. Bainter due to the fact that Yakima County was also a developer with Shaw Creek construction and development plans. In addition, in early 2011, Yakima County had received a FEMA PDM grant of \$2.7 million; this money would be released to Yakima County following “full-disclosure” of environmental impacts during a NEPA process. Acting as agent for Mr. Bainter’s project involving Shaw Creek in 2011 and 2012, Yakima County could pre-plan and implement Shaw Creek environmental destruction prior to the NEPA process. In essence, Mr. Bainter could serve as a proxy for Yakima County by preemptively destroying the Shaw Creek environment prior to the required NEPA process. In truth, Yakima County and Mr. Bainter did pre-plan and implement Shaw Creek watercourse and Shaw Creek wetland destruction that occurred in April-May of 2012.

During 2011 and 2012, Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC), created false project plans involving a so-called Shaw Creek habitat improvement project where an expansive flowering habitat zone would shade the trout-filled waters of Shaw Creek. While members of the public were informed about the planned Shaw Creek habitat improvement project at the Bainter site, secretly Yakima County, the WDFW, the City of Yakima, and Mr. Bainter created plans to destroy the habitat of Shaw Creek (including the destruction of jurisdictional wetlands). The secretive plans to relocate Shaw Creek into a ditch were recorded within a prescription that was issued by Mr. Eric Bartrand in April, 2012. Mr. Eric Bartrand (WDFW) also recorded that the jurisdictional Shaw Creek watercourse would be filled with excavation spoils. In addition, jurisdictional Shaw Creek wetlands were preemptively filled and the floodway was also filled.

By filling the floodway at the Bainter site, Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) created an increased flood-risk to the adjacent community. The conveyance capacity of the man-made ditch under unlawful use at the Bainter site is insufficient to carry normal flows of Shaw Creek. By relocating Shaw Creek into a ditch with insufficient conveyance capacity, Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) also increased the flood-risk to the adjacent community. On February 21, 2017, the conveyance capacity of the man-made ditch under unlawful use at the Bainter site was exceeded, leading to overbank flooding. Floodwaters inundated the Cottonwood Grove subdivision with associated flooding of homes, flooding of crawlspaces, and flooding of roadways.

A point-by-point summation of the Bainter project of 2012 (Shaw Creek) follows:

- Without permits, Shaw Creek was relocated into a man-made ditch. The relocation of Shaw Creek, a jurisdictional watercourse, into a ditch at the Bainter site was a well-documented violation of the Federal Clean Water Act.

- Without permits, the jurisdictional Shaw Creek watercourse was filled with excavation spoils. The filling of Shaw Creek, a jurisdictional watercourse at the Bainter site, was a well-documented violation of the Federal Clean Water Act.
- Without permits, jurisdictional Shaw Creek wetlands were filled with excavation spoils. The filling of Shaw Creek jurisdictional wetlands at the Bainter site was a well-documented violation of the Federal Clean Water Act.
- The charted floodway at the Bainter site was filled with excavation spoils; the adjacent community was placed at-risk of flooding due to the filling of the floodway.
- The conveyance capacity of the man-made ditch under unlawful use is insufficient, causing an increased flood-risk to the adjacent community.
- Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) performed a flagrant violation of the State Growth Management Act by intentionally misinforming members of the public about the so-called Shaw Creek habitat improvement project while secretly planning the destruction of the habitat involving Shaw Creek.
- Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) pre-planned and implemented violations of the Federal Clean Water Act at the Bainter site of Shaw Creek.
- Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) used a corrupt, secretive, and unlawful prescription scheme to pre-plan violations of the Federal Clean Water Act at the Bainter site in 2012.
- Following well-documented violations of the Federal Clean Water Act at the Bainter site, Mr. Bainter has unlawfully indicated that the location of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse.
- Following well-documented violations of the Federal Clean Water Act at the Bainter site, has participated in a scheme to prevent enforcement of the Federal Clean Water Act.

- Following well-documented violations of the Federal Clean Water Act at the Bainter site, Yakima County, the WDFW, Ecology, Widener & Associates, the City of Yakima, and others have participated in a scheme to prevent enforcement of the Federal Clean Water Act.
- Following well-documented violations of the Federal Clean Water Act at the Bainter site, Mr. Bainter participated in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act. Mr. Bainter unlawfully indicated that the filled jurisdictional Shaw Creek watercourse and filled jurisdictional wetlands had become valuable commercial land that he is offering for sale at the price of \$3.7 million.
- Following well-documented violations of the Federal Clean Water Act at the Bainter site, Yakima County participated in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act. Yakima County sought the release of a \$2.7 million FEMA PDM grant by preemptively destroying jurisdictional wetlands at the Bainter site of Shaw Creek and, during the NEPA process, indicating that no wetlands existed along Shaw Creek (i.e. the jurisdictional wetlands had been preemptively destroyed).
- Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) did not comply with NFIP regulations by obtaining required permits to perform the 2012 Bainter project.
- Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) did not comply with NFIP regulations by providing mandatory legal notification to FEMA, to Ecology, and to the adjacent community at the time of the relocation of the Shaw Creek watercourse in 2012.
- Since 2012, Yakima County, WDFW, the City of Yakima, and Mr. Greg Bainter (Bainter Group LLC) have failed to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse.
- Since 2012, “conditions on the ground” differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps; as such, the developer (Bainter) possesses the mandate to revise the regulatory and controlling

Shaw Creek FEMA 100-year Floodplain maps prior to proposing new development at the site. Similarly, Yakima County is a developer also possessing the mandate to revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to proposing new development at the Shaw Creek site.

- Mr. Greg Bainter and Yakima County have failed to revise regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to proposing new development at the Shaw Creek site.

Beginning in 2013, Mr. Bainter created new plans for development involving Shaw Creek by performing environmental studies of the man-made ditch under unlawful use as if the ditch were the location of the jurisdictional Shaw Creek watercourse. Between 2013 and 2017, numerous wetland assessments were performed at the Bainter site. Eventually, forensic wetlands that were illegally filled were identified and delineated. A remnant of wetland on the east side of the Bainter site was identified and delineated. Widener & Associates officials unlawfully indicated that the entire course of the man-made ditch under unlawful use is a jurisdictional wetland despite the fact that the ditch is not a critical area and the ditch does not possess jurisdictional wetlands. Mr. Bainter, Widener officials, local officials, and all others are mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse. Yakima County officials, Mr. Bainter, Widener officials, and many others unlawfully assert that the location of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse, ignoring the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps.

In 2014, Mr. Bainter and his consultant, Mr. Durant, created new development plans where the location of the man-made ditch under unlawful use was noted as being the location of the jurisdictional Shaw Creek watercourse. Mr. Bainter and Mr. Durant unlawfully indicated that the B-2 commercial zoning district had expanded to the south, causing the location of illegally filled jurisdictional wetlands and the illegally filled jurisdictional watercourse to become, per Bainter and Durant, valuable commercial land that is now offered for sale (for a price of \$3.7 million). Mr. Bainter and Mr. Durant asserted that the Shaw Creek environment could be preemptively destroyed;

subsequently, Mr. Bainter could achieve wealth resulting from the environmental destruction and proceed with commercial development of the Shaw Creek site.

During a LUPA appeal (Judge Hahn, 2015), development at the Bainter site was barred due to well-documented preemptive habitat destruction at the Bainter site of Shaw Creek. Since 2015, Mr. Bainter, the City of Yakima, and Ecology have sought ways to reverse the LUPA injunction, barring development of the Bainter site. A few weeks before the LUPA hearing within Superior Court, Mr. Bainter and Mr. Durant created a secretive JARPA (i.e. a second JARPA for the Bainter development project), submitted the JARPA to Mr. Eric Bartrand at the WDFW, and obtained a secretive prescription recording plans to dam and divert Shaw Creek. As such, Mr. Bainter, Mr. Durant, and Mr. Bartrand demonstrated contempt for the rule of law by issuing new permits for development without waiting for a judicial ruling within Superior Court. In addition, Mr. Bainter, Mr. Durant, and Mr. Bartrand utilized the corrupt, secretive, and unlawful prescription scheme in 2015 to pre-plan new violations of the Federal Clean Water Act at the Bainter site.

In 2016 and 2017, Mr. Bainter, the City of Yakima (Watkins, Peters), Ecology (Ms. Catherine Reed), and the WDFW (Mr. Eric Bartrand) crafted a scheme to reverse the LUPA injunction. Reportedly the City of Yakima and Ecology worked with Mr. Bainter to use Widener & Associates to perform new wetland studies of the Bainter site despite the fact that Widener & Associates possesses significant conflicts of interest. Widener & Associates are the environmental consultants for Yakima County; Yakima County has paid over \$50,000 to Widener & Associates to unlawfully declare that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. Widener & Associates produced an erroneous and falsified January 2015 Shaw Creek wetland report during the NEPA process, informing FEMA that no wetlands existed along the course of Shaw Creek. Widener & Associates is significantly influenced by Yakima County officials and cannot perform accurate, truthful, and lawful environmental studies of the Bainter site; these facts are known to the City of Yakima, Ecology and the WDFW. Regardless, Mr. Bainter was referred to Widener & Associates (by the City, by Ecology) to perform new wetland studies of the Bainter site in 2016 and 2017.

As expected, Widener & Associates created a July 2016 wetland study for Mr. Bainter that unlawfully identified the location of the man-made ditch under unlawful use as the location of the jurisdictional watercourse. The man-made ditch is not located within the charted floodway and is also located outside of the Shaw Creek FEMA 100-year Floodplain; regardless, Widener & Associates unlawfully indicated that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. Widener & Associates officials are mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of Shaw Creek; the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that the man-made ditch under unlawful use is NOT the location of the jurisdictional Shaw Creek watercourse.

For several years, Widener & Associates have participated in the scheme to prevent enforcement of the Federal Clean Water Act by unlawfully declaring that a man-made ditch under unlawful use is the location of the jurisdictional watercourse. By creating an unlawful January 2015 wetland study for Yakima County, Widener & Associates sought to prevent enforcement of the Clean Water Act following well-documented and preemptive filling of jurisdictional Shaw Creek wetlands. Widener & Associates has now created new wetland studies for Mr. Bainter (2016, 2017) that unlawfully indicate the entire course of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse.

When Widener & Associates created the erroneous and unlawful wetland study of July 2016 for Mr. Bainter, a copy was delivered to Ms. Catherine Reed (Ecology) who then delivered the wetland study to the USACE in an effort to dupe USACE officials into believing that the location of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. As such, Ms. Catherine Reed and Ecology became entangled with the scheme to prevent enforcement of the Federal Clean Water Act following well-documented environmental crimes at the Bainter site of Shaw Creek.



As of 2017, Mr. Bainter, the City of Yakima, and Ecology are continuing with the unlawful scheme to reverse the LUPA injunction by submitting new versions of Bainter wetland studies to the USACE in an effort to declare that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. The legal landscape for Mr. Bainter became increasingly complex on February 21, 2017 when overbank flooding from the man-made ditch under unlawful use caused the Cottonwood Grove subdivision to become inundated; the flood-fight continued for nearly a month.

Numerous parties, including Mr. Bainter, are identified as PLPs (Potentially Liable Parties) for the flood-related costs of the February 21, 2017 flood-event. As noted, Mr. Bainter is entangled with an adverse LUPA injunction, preventing development of the Bainter site of Shaw Creek. In addition, Mr. Bainter (Bainter Group LLC) has been named as a defendant with Clean Water Act litigation following well-documented environmental crimes of 2012. Clean Water Act litigation is designed to restore the Bainter site by removing unlawful fill from the jurisdictional watercourse and from jurisdictional wetlands. When the Bainter site is restored, a great deal of attention must be placed upon the flood-risk to the adjacent community; a sufficient watercourse and floodway must be restored at the Bainter site when the judicially mandated site restoration occurs.

As noted, Mr. Bainter's destruction of the Shaw Creek environment is closely aligned with Yakima County's flood control project. Mr. Bainter places significant hope in Yakima County's efforts to relocate Shaw Creek into a groundwater ditch, directed due-south along the Cottonwood Elementary School. However, Yakima County pre-planned the environmental destruction of Shaw Creek and destruction of Shaw Creek wetlands prior to the NEPA process. And a LUPA injunction creates precedent that preemptive habitat destruction in advance of planned development bars issuance of permits; as such, Yakima County is barred from obtaining permits for the greater flood-control project. Yakima County, just like Mr. Bainter, must ensure that Shaw Creek site restoration occurs following pre-planned destruction of the Shaw Creek environment. Yakima

County and Mr. Bainter both propose new Shaw Creek development without gaining compliance with the Federal Clean Water Act.

Within Federal District Court, compliance with the Federal Clean Water Act is mandatory. As such, violators must pay fines and must restore the site of environmental crimes. Given the strength of evidence, the Federal judge is likely to mandate that illegal fill is removed from the jurisdictional Shaw Creek watercourse and illegal fill is removed from jurisdictional Shaw Creek wetlands. At the time of Bainter site restoration, hydraulic engineering must ensure that a sufficient watercourse and sufficient floodway contain a 500-year flood-event, serving to protect the Cottonwood Grove subdivision. Both Mr. Bainter and Yakima County propose new development involving the Bainter site of Shaw Creek. Yet Clean Water Act violations must be addressed within Federal District Court; the expected result of Clean Water Act litigation will be restoration of the Bainter site of Shaw Creek. While Yakima County possesses grandiose plans to perform a Shaw Creek flood control project following well-documented environmental crimes, Yakima County will not make progress on their project elements prior to full-compliance with the Federal Clean Water Act.

Regardless of current the scheme to prevent enforcement of the Federal Clean Water Act and the scheme to reverse the LUPA injunction, parties must face reality; judicially mandated Shaw Creek site restoration is likely to preclude Yakima County flood control project plans. Yakima County and Mr. Bainter joined as “agent” and “developer” in 2011-2012 to preemptively destroy Shaw Creek and preemptively destroy Shaw Creek jurisdictional wetlands. The violators of the Federal Clean Water Act assume that the environmental crimes of 2012 can be ignored as new Shaw Creek development projects are currently proposed and implemented. Within Federal District Court, violators of the Federal Clean Water Act (Bainter, others) will likely be mandated to perform site restoration prior to any new development.

**Mr. Perry Harvester (WDFW)**

Mr. Perry Harvester is the immediate supervisor for Mr. Bartrand at the WDFW in Yakima. Mr. Perry Harvester has recorded in a letter that the WDFW does, in fact, prescribe the relocation of jurisdictional watercourses. So Mr. Harvester is fully aware of the prescription scheme at the WDFW. Mr. Harvester is aware that the State of Washington knowingly plans violations of the Federal Clean Water Act by means of recording planned watercourse relocations, watercourse filling, watercourse dredging, and jurisdictional wetland filling. Mr. Harvester is also aware that officials at the WDFW lack the legal authority to prescribe violations of the Federal Clean Water Act.

**Mr. Mike Livingston (WDFW)**

Mr. Mike Livingston is the South Central Region 3, Regional Director of the WDFW who is the supervisor for Mr. Perry Harvester. On June 10, 2014, Mr. Livingston created a letter that served to “whitewash” the actions of Mr. Bartrand who prescribed violations of the Clean Water Act at the Bainter site in 2012. Rather than taking meaningful action to dismantle the prescription scheme, Mr. Livingston indicated that Shaw Creek would simply be moved off of the Bainter site as a result of a greater flood control project. However, the greater Yakima County flood control project was facilitated by preemptive habitat destruction in advance of planned development; the preemptive habitat destruction of Shaw Creek included several well-documented violations of the Federal Clean Water Act that resulted from a prescription written by the WDFW (Mr. Eric Bartrand; Region 3, WDFW).

**Mr. Jeff Legg (Yakima County – Flood Control Zone District)**

Mr. Jeff Legg, along with Mr. Cliff Bennett, were the two individuals at Yakima County who were primarily working on the Shaw Creek Flood Hazard Mitigation project in 2011; in 2011, FEMA informed Mr. Legg (and Mr. Bennett) that Yakima County would receive a grant valued at \$2.7 million. However, full-disclosure of environmental impacts was required during a NEPA process, prior to release of grant funding (FEMA PDM grant for the Shaw Creek project). Mr. Jeff Legg crafted a plan to preemptively destroy the Shaw Creek environment prior to environmental studies during the NEPA process. Mr. Jeff Legg and Yakima County would serve as “agent” for Mr. Bainter who owned land along Shaw Creek; Mr. Jeff Legg and Yakima County would ensure that a project would be created causing Shaw Creek environmental destruction at the Bainter site prior to required wetland studies of Shaw Creek.

As “agent” for Mr. Bainter in 2011 and 2012, Mr. Legg and Yakima County prepared application materials for a so-called “Shaw Creek habitat improvement project” where flowering dogwood trees and wild roses would be planted along the trout-filled waters of Shaw Creek. Secretly, Mr. Legg, Yakima County, Mr. Bainter and Mr. Bartrand planned to destroy Shaw Creek. The secretive plan to fill the Shaw Creek jurisdictional watercourse and relocate the stream into a ditch was recorded within an HPA document (i.e. prescription) that was created by Mr. Bartrand (WDFW). In essence, the State of Washington and Yakima County cooperated and colluded to violate the Federal Clean Water Act on land owned by a commercial developer, Mr. Greg Bainter (Bainter Group LLC).

Mr. Legg, Yakima County, Mr. Bartrand, and the State of Washington (WDFW) ensured that the Shaw Creek watercourse and jurisdictional Shaw Creek wetlands would be destroyed prior to formal wetland studies of Shaw Creek; the formal wetland studies were required by FEMA during the NEPA process for the FEMA PDM grant (Shaw Creek Flood Hazard Mitigation grant). During the NEPA process, Yakima County asserted that

no wetlands existed at the Bainter site of Shaw Creek. In truth, jurisdictional wetlands were preemptively filled in 2012, shortly before the wetland studies required by FEMA.

Mr. Jeff Legg was on-site (Bainter site) on April 30, 2012, the first day of excavations for the so-called Shaw Creek habitat improvement project. In addition, Mr. Bainter provided testimony under oath that Mr. Legg indicated where to create the breach, causing waters to divert into the man-made ditch; as such, Mr. Legg directed the Clean Water Act violation at the Bainter site. The relocation of Shaw Creek into a man-made ditch at the Bainter site was pre-planned by the State of Washington and by Yakima County. The preemptive destruction of Shaw Creek and preemptive destruction of Shaw Creek critical areas (wetlands, Riparian Habitat Zones, floodway, etc) was pre-planned by the State of Washington and by Yakima County.

The pre-planned violations of the Federal Clean Water Act by Mr. Jeff Legg (Yakima County), Mr. Eric Bartrand (State of Washington; WDFW), and Mr. Greg Bainter (Bainter Group LLC) were motivated by “financial gain”. Yakima County was motivated to receive \$2.7 million in Federal grant funding in the form of the FEMA PDM grant. By preemptively destroying the environment of Shaw Creek, Yakima County determined that their chances of gaining the release of the \$2.7 million from the Federal government would be increased. For Mr. Greg Bainter (Bainter Group LLC), he too created a “scheme to gain wealth resulting from violations of the Federal Clean Water Act”. By relocating the waters of Shaw Creek into a man-made ditch, Mr. Bainter made the unlawful claim that he possesses a larger B-2 commercial zoning district; in other words, Mr. Bainter claims that the Clean Water Act violations of 2012 provided him with a windfall of new, valuable commercial land.

Since 2012, Yakima County has unlawfully indicated that the location of the man-made ditch under unlawful use (Bainter site) is the location of the Shaw Creek jurisdictional watercourse. Mr. Jeff Legg was a certified floodplain manager (CFM) with knowledge of floodplain regulations; Mr. Legg knew that Shaw Creek Clean Water Act violations would not cause a man-made ditch to become the location of the jurisdictional Shaw Creek watercourse. Mr. Jeff Legg, like all other officials, must utilize the regulatory and

controlling Shaw Creek FEMA 100-year floodplain maps to identify the location of the Shaw Creek floodway and the jurisdictional watercourse. Yakima County officials such as Mr. Legg do not possess any legal authority to declare the man-made ditch under unlawful use as the location of the jurisdictional Shaw Creek watercourse.

**Mr. Cliff Bennett (Yakima County)**

Mr. Cliff Bennett was the official in charge of the Shaw Creek Flood Hazard Mitigation Project in 2011 and 2012 when Mr. Jeff Legg (and Yakima County) performed the role of “agent” for Mr. Bainter (Bainter Group LLC). Mr. Cliff Bennett and Mr. Jeff Legg both were working on the greater Shaw Creek project; likely Mr. Bennett was fully informed about the pre-planned violations of the Clean Water Act involving the Bainter site of Shaw Creek. The Bainter site of Shaw Creek was preemptively destroyed in 2012 with Yakima County acting as “agent” and also directing the breach, causing waters to relocate into the man-made ditch. In 2013, evidence of unlawful dredging of Shaw Creek documents cumulative environmental destruction at the Abarta site. In 2014, just two months prior to NEPA environmental studies, the Radke site of Shaw Creek was dredged and excavated; the preemptive destruction of the Shaw Creek environment at the Radke site is not likely coincidental. In addition, hard-evidence demonstrates that Mr. Bennett was the individual in charge of the Shaw Creek flood project while Mr. Legg performed the secondary role.

From 2011 through the present (2017), Mr. Cliff Bennett has been the individual at Yakima County in charge of the Shaw Creek flood hazard mitigation project. Yakima County planned the preemptive destruction of the Shaw Creek environment in April-May 2012. Starting in 2014, wetland studies of Shaw Creek were performed. A first-version of a wetland report was created for Yakima County by Widener & Associates with the publication date of “January 2015”. Within the January 2015 wetland report, no wetlands were identified at the Bainter site and only one wetland (Wetland A) was identified along two miles of jurisdictional watercourse; the January 2015 wetland report was rejected by the USACE. Regardless, Mr. Cliff Bennett submitted the January 2015 wetland report to FEMA where the January 2015 was attached to the Environmental Assessment.

During the NEPA process, the USACE required Mr. Bennett (Yakima County) to create a new version of wetland report since the January 2015 wetland report was rejected; as a result, an “October 2015 wetland report” was created by Widener & Associates. During



the NEPA process, Mr. Bennett concealed the October 2015 wetland report from FEMA and concealed the report from members of the public. So, Mr. Bennett and Yakima County knowingly prevented the “full-disclosure” of adverse environmental impacts to wetlands resulting from the Shaw Creek flood hazard mitigation project. By concealing the October 2015 wetland report, Mr. Bennett and Yakima County prevented full-disclosure of environmental impacts during the NEPA process. Mr. Bennett and Yakima County concealed the content of the October 2015 wetland report until March of 2017.

The October 2015 wetland report contained three significant elements. First, the October 2015 wetland report affirmed that 58-jurisdictional wetlands would be destroyed as a result of the Shaw Creek flood hazard mitigation project. Second, significant portions of the Yakima County project area were not studied including the western reaches of Wide Hollow Creek and the southern portion of the proposed groundwater ditch (Shaw Creek relocation channel). Third, a man-made ditch under unlawful use (Bainter site) was unlawfully indicated as the location of the jurisdictional Shaw Creek watercourse. By concealing the October 2015 during the NEPA process, Mr. Bennett and Yakima County ensured that a FONSI would be issued when, in fact, a FONSI was incorrect since the project would involve the destruction of 58-jurisdictional wetlands. The failure to perform wetland studies within large portions of the proposed site was also a significant error. And the pre-planned Clean Water Act violations by Yakima County did not cause the man-made ditch under unlawful use to become the jurisdictional Shaw Creek watercourse.

The NEPA process largely concluded with the issuance of the Environmental Assessment and issuance of a FONSI (Finding of No Significant Impact) by FEMA (early 2016). Between July 2016 and November 2015, Yakima County conducted a SEPA process. During the SEPA process (i.e. SEP2016-00029), Mr. Cliff Bennett, with material assistance from other Yakima County officials, concealed the content of the October 2015 wetland report from members of the public and from commenting agencies. Yakima County indicated that the project file for SEP2016-00029 was “complete” as of August 9, 2016. Typed forms suggested that Mr. Bennett submitted application materials; yet the August 9, 2016 planning department file for SEP2016-00029 contained only the January

2015 wetland report and did not include the October 2015 wetland report. During commenting windows for SEP2016-00029, members of the public were allowed only to read the content of the flawed and rejected January 2015 wetland report. On October 17, 2016, one day prior to the end of commenting, Mr. Bennett sent an email to Mr. Gumz (Yakima County planning) with the October 2015 wetland report as an attachment. Mr. Gumz then arranged for the scanning of the October 2015 wetland report into the project file for SEP2016-00020; the October 2015 wetland report was “slipped-in” to the planning file roughly two months after the file was determined as being “complete”.

Hard-evidence demonstrates that Mr. Cliff Bennett knowingly participated in a flagrant violation of the State Growth Management Act by introducing the October 2015 wetland report into SEP2016-00029 files on October 17, 2016. Simultaneously, Mr. Cliff Bennett participated in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act – and – he participated in a scheme to prevent enforcement of the Federal Clean Water Act. The October 2015 wetland report, “slipped-in” to the SEP2016-00029 unlawfully indicated that the man-made ditch under unlawful use (Bainter site) is the location of the jurisdictional watercourse. Mr. Bennett attempted to incorporate the content of the October 2015 wetland report, including the unlawful content pertaining to the location of Shaw Creek, into the Final SEPA DNS for SEP2016-00029. Mr. Bennett knowingly participated in a scheme to achieve wealth resulting from well-documented violations of the Federal Clean Water Act.

In 2016, Mr. Cliff Bennett obtained from Mr. Bartrand a “prescription” to dredge Wide Hollow Creek and to unlawfully poison trees along Wide Hollow Creek using imazapyr herbicide. Mr. Bartrand does not possess any legal authority to allow for the dredging of Wide Hollow Creek. Quite simply, Mr. Bennett (Yakima County) and Mr. Bartrand (WDFW) utilized the unlawful prescription scheme to pre-plan Wide Hollow Creek violations of the Federal Clean Water Act in 2016.

Presently, Yakima County and Mr. Cliff Bennett are identified as “applicant/developer” for a project involving flood control and development work within Shaw Creek and within Wide Hollow Creek. The “applicant/developer” for the Shaw Creek and Wide

Hollow Creek flood control project (i.e. Mr. Cliff Bennett; Yakima County) note that “conditions on the ground” differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. NFIP regulations (Federal law) mandates that the “applicant/developer” possesses the sole duty to revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to site development. As of 2017, Mr. Cliff Bennett and Yakima County have failed to revise the existing regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps.

By failing to revise the existing FEMA floodplain maps, Mr. Bennett and Yakima County face an untenable position where they assert that the jurisdictional Shaw Creek watercourse is a ditch that is located outside of the charted floodway and is also located outside of the margins of the charted Shaw Creek FEMA 100-year floodplain. According to Mr. Bennett, the waters of the jurisdictional Shaw Creek watercourse flow outside of the associated 100-year floodplain. In truth, Yakima County officials (with Mr. Bainter and Mr. Bartrand) caused the waters of Shaw Creek to flow in a man-made ditch in 2012 and did not make lawful revisions to the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. As the current “applicant/developer”, Mr. Bennett and Yakima County still possess the legal duty to revise the FEMA 100-year Floodplain maps.

Mr. Bennett and Yakima County may not develop Shaw Creek prior to revising FEMA maps. No other party possesses the duty to lawfully revise the FEMA maps prior to implementation of the Shaw Creek and Wide Hollow Creek flood control project. Mr. Bennett, with material assistance from Yakima County planning officials (Mr. Gumz; Mr. Carroll; Mr. Deitrick) simply ignored the legal obligation to perform lawful revisions to the Shaw Creek FEMA 100-year Floodplain maps. FEMA map revisions must occur when the applicant/developer notes that conditions on the ground differ from the content of the regulatory FEMA maps. In the current scenario, the applicant/developer (Mr. Bennett; Yakima County) indicate that water is flowing within a man-made ditch under unlawful use; on the other hand, the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that water is not flowing within the ditch. Rather, FEMA

indicates that the location of the floodway and the location of the jurisdictional Shaw Creek watercourse did not change at the time of Clean Water Act violations of 2012.

Summary of selected issues entangling Mr. Cliff Bennett:

1. Mr. Cliff Bennett was directing the Shaw Creek Flood Hazard Mitigation project for Yakima County in 2012 when Yakima County planned and implemented violations of the Federal Clean Water Act at the Bainter site of Shaw Creek.
2. Mr. Cliff Bennett concealed the content of the October 2015 wetland report during the NEPA process, disallowing members of the public and disallowing FEMA officials from learning about significant adverse environmental impacts to wetlands.
3. During the SEPA process for SEP2016-00029, Mr. Cliff Bennett concealed the October 2015 wetland report and concealed the fact that significant portions of the project area were not studied.
4. At the conclusion of the commenting windows for SEP2016-00029, Mr. Cliff Bennett, with material assistance from Yakima County planning officials, knowingly performed a flagrant violation of the State Growth Management Act by performing a “last-minute” introduction of the October 2015 wetland report into the project planning file, disallowing commenting by members of the public and disallowing commenting by agencies.
5. By “slipping-in” the content of the October 2015 wetland report into planning files, two months after the file was “complete”, Mr. Cliff Bennett knowingly participated in a scheme to prevent enforcement of the Federal Clean Water Act.
6. By “slipping-in” the content of the October 2015 wetland report into planning files, two months after the file was “complete”, Mr. Cliff Bennett knowingly participated in a scheme to achieve wealth as a result of violations of the Federal Clean

Water Act.

7. As an “applicant/developer”, Mr. Bennett (and Yakima County) has failed to lawfully revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to proposing Shaw Creek development.

8. Mr. Cliff Bennett (Yakima County) and Mr. Eric Bartrand (WDFW) implemented the prescription scheme in 2016 to pre-plan the dredging of Wide Hollow Creek in violation of the Federal Clean Water Act.

9. Mr. Cliff Bennett (Yakima County) has created secretive project elements of SEP2016-00029 (Shaw Creek and Wide Hollow Creek flood project). Secretive project elements involving planned Clean Water Act violations include: filling a portion of Wide Hollow Creek; relocation of Wide Hollow Creek into a roadside ditch; dewatering of Wide Hollow Creek; destruction of jurisdictional wetlands without performing site studies for the presence of wetlands.

10. Mr. Cliff Bennett is an applicant and developer for SEP2016-00029; at the same time. Mr. Cliff Bennett controls finances involving the Shaw Creek flood control project under the financial code “FC 3301”. Mr. Cliff Bennett pays Mr. Byron Gumz under FC 3301. In the present scenario, the applicant/developer (Mr. Bennett) is paying money to Mr. Gumz who is tasked with assuring that a meaningful environmental review takes place during the SEPA process. Needless to say, the transfer of money from the applicant to the planning official introduces a significant conflict of interest.

**Mr. Byron Gumz (Yakima County)**

Mr. Byron Gumz is under the pay of Mr. Cliff Bennett. By receiving payment under FC 3301, Mr. Gumz is being paid by the applicant/developer for SEP2016-00029. Needless to say, the receipt of money from the applicant by Mr. Gumz is a significant conflict of interest. As a Yakima County planning official tasked with performing a meaningful review of adverse environmental impacts associated with SEP2016-00029, Mr. Gumz might be incentivized to violate the State of Washington Growth Management Act. The receipt of money from Mr. Bennett might cause Mr. Gumz to knowingly participate in a scheme to prevent enforcement of the Federal Clean Water Act. And Mr. Gumz, by receiving money from Mr. Bennett, might participate in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act. Facts indicate that Mr. Gumz knowingly violated the State of Washington Growth Management Act, participated in a scheme to prevent enforcement of the Federal Clean Water Act, and participated in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act.

The role of Mr. Byron Gumz with the Shaw Creek flood control project can be traced to 2015 when Mr. Gumz started to attend strategic meetings for the project. On July 15, 2016, Mr. Bennett delivered to Mr. Gumz application materials that were never introduced into the project files for SEP2016-00029. Apparently, Mr. Gumz simply “sat on” the materials presented to him by Mr. Bennett on July 15, 2015. On July 20, 2016, an anonymous individual submitted a differing version of SEPA checklist and differing versions of site plans. The July 20, 2016 documents were the versions of application materials that were introduced (scanned) into the Yakima County planning department files for SEP2016-00029. The July 20, 2016 application materials for SEP2016-00029 were not signed by any individual; yet Mr. Gumz processed the documents as if they were signed. On July 15, 2016, Mr. Gumz possessed a copy of the October 2015 wetland report but Mr. Byron Gumz (Yakima County) intentionally concealed the content of the wetland report; Mr. Gumz did not scan or introduce the October 2015 wetland report into the Yakima County planning department file for SEP2016-00029. So, Mr. Gumz knowingly participated in the pre-planned violation of the State Growth Management

Act. When performing a flagrant violation of the Growth Management Act, Mr. Gumz participated in the scheme to prevent enforcement of the Federal Clean Water Act by concealing the content of the October 2015 wetland report; subsequently, on October 17, 2016, Mr. Gumz received another copy of the October 2015 wetland report which was belatedly “slipped-in” to the project files at the very end of the commenting windows. The “last minute” introduction of the October 2015 wetland report by Mr. Gumz was also part of a scheme to achieve wealth (i.e. \$2.7 million FEMA PDM grant) as a result of violations of the Federal Clean Water Act. Mr. Byron Gumz was an essential individual in the scheme to prevent enforcement of the Federal Clean Water Act by belatedly introducing the October 2015 wetland report into planning files; the report unlawfully indicated that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse.

Mr. Byron Gumz, like all other Yakima County officials, is mandated to use the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted FEMA floodway and the jurisdictional Shaw Creek watercourse. Mr. Gumz, by “slipping in” the October 2015 wetland report at the “last minute” participated in a scheme to declare the man-made ditch as the location of the jurisdictional Shaw Creek watercourse. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps indicates that the man-made ditch under unlawful use (Bainter site) is not the location of the jurisdictional watercourse. Mr. Gumz violated NFIP regulations by failing to utilize regulatory FEMA maps to identify the location of the jurisdictional Shaw Creek watercourse. During the SEPA process, Mr. Gumz performed the following illegal or improper actions:

- Processing of an unsigned SEPA checklist as if it were signed by a person.
- Processing of a SEPA application from an applicant/developer (Yakima County) who does not possess required land ownership of the project site.
- Receipt of inappropriate payments from the applicant/developer under FC 3301.
- Failing to scan the October 2015 wetland report into the complete project file for SEP2016-00029.

- Failing to allow members of the public to view the entire content of the SEPA checklist for SEP2016-00029 on the Yakima County planning department project website.
- Failing to identify the correct project location for SEP2016-00029 on the Yakima County planning department project website.
- Failing to allow members of the public to view the content of the October 2015 wetland report on the Yakima County planning department project website.
- Dissemination of a false and misleading project site plan for SEP2016-00029.
- Dissemination of false and misleading SEPA materials for SEP2016-00029.
- Issuing a formal legal notification to members of the public that the public possessed a 14-day appeal window following issuance of the Final SEPA DNS for SEP2016-00029; subsequently, Mr. Gumz and the planning department issued a differing formal legal notice, informing members of the public that the public possessed no right to appeal the SEPA DNS.
- Issuing a preliminary SEPA DNS that contained no reference to the October 2015 wetland report.
- Performing a flagrant violation of the State Growth Management Act by introducing the content of the October 2015 wetland report into Yakima County planning department files nearly two months after the application was determined as being “complete”.
- Participating in a scheme to prevent enforcement of the Federal Clean Water Act by “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029.
- Participating in a scheme to achieve wealth as a result of violations of the Federal Clean Water Act by “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029.
- Creating an incomplete Final SEPA DNS for SEP2016-00029 by failing to physically attach all required documents that were “incorporated by reference”.



- Creating an incomplete Final SEPA DNS for SEP2016-00029 by failing to lawfully indicate in the “appeal” section the “date” and “location” information for an appeal by a member of the public.

Mr. Byron Gumz is a senior planner at Yakima County who, in 2016, was assigned to SEP2016-00029 (Shaw Creek and Wide Hollow Creek flood project). For several years, Mr. Gumz has participated in strategic planning meetings for the Yakima County project and can be considered a project proponent. In addition, Mr. Gumz is paid by the applicant/developer (i.e. Mr. Cliff Bennett) under the financial code “FC 3301”. By receiving money from the developer, Mr. Gumz experiences a significant conflict of interest and, perhaps, finds it impossible to perform a meaningful review of adverse environmental impacts associated with SEP2016-00029. By receiving money from the developer, Mr. Gumz might also agree to conceal documents from the public (i.e. conceal the content of the October 2015 wetland report). The fact that Mr. Gumz receives funding from the developer likely explains Mr. Gumz’s involvement with violations of law during the SEPA process for SEP2016-00029 including the following:

- Mr. Gumz participated in the flagrant violation of the State Growth Management Act by concealing the October 2015 wetland report during commenting windows and then “slipping-in” the report into project files nearly two months after the date that he determined the file was “complete”.
- By unlawfully “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Gumz participated in the “scheme to prevent enforcement of the Federal Clean Water Act”.
- By unlawfully “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Gumz participated in the “scheme to achieve wealth resulting from violations of the Federal Clean Water Act”. Specifically, Yakima County knowingly planned and implemented Shaw Creek Clean Water Act violations in an effort to gain the

- release of \$2.7 million in FEMA PDM grant funding and \$0.5 million of Centennial grant funding.
- Mr. Gumz participated in the planned destruction of jurisdictional wetlands within portions of the project area (SEP2016-00029) that were never studied along the western portion of Wide Hollow Creek; this was another planned violation of the Federal Clean Water Act.
  - Mr. Gumz participated in the planned relocation of Wide Hollow Creek into a roadside ditch, a secretive project element of SEP2016-00029) that was never made known to the public; this was another planned violation of the Federal Clean Water Act.
  - Mr. Gumz participated in a violation of SEPA rules (State law) by failing to include “date” and “location” information into the content of the incomplete Final SEPA DNS for SEP2016-00029.
  - Mr. Gumz violated NFIP regulations by failing to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the Shaw Creek floodway (with the included jurisdictional watercourse).

During the SEPA process, Mr. Gumz received an unsigned SEPA checklist from an anonymous individual on July 20, 2016. Instead of returning the unsigned application to the developer, Mr. Gumz processed the application materials as if they were signed and complete. The applicant/developer also did not possess ownership of land required to perform the project; regardless, Mr. Gumz processed the application materials as if the developer possessed the land. Mr. Gumz then participated in an evolving scheme to prevent members of the public from filing an appeal for SEP2016-00029. After determination that the unsigned application materials were complete on August 9, 2016, a Yakima County legal notice was issued to the public; the legal notice informed members of the public of a normal and customary 14-day appeal window following issuance of the Final SEPA DNS. However, on November 16, 2016, the date of issuance of the incomplete Final SEPA DNS for SEP2016-00029, Mr. Gumz and Yakima County indicated that members of the public were disallowed from filing an appeal under SEPA;

on November 16, 2016, Yakima County did not allow for a 14-day appeal window for members of the public.

Mr. Gumz possessed a copy of the October 2015 wetland report on July 15, 2016 when Mr. Cliff Bennett delivered the document. Mr. Byron Gumz was aware of the content of the October 2015 wetland report containing significant information about three critical issues. First, significant portions of the project area were never studied for the presence of wetlands. Second, 58-jurisdictional wetland would be destroyed as a result of implementation of SEP2016-00029. Third, a man-made ditch under unlawful use was unlawfully determined as being the location of the jurisdictional Shaw Creek watercourse. Mr. Gumz is mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain map to identify the location of the Shaw Creek floodway and the included location of the jurisdictional Shaw Creek watercourse.

Mr. Byron Gumz concealed the content of the October 2015 wetland report from members of the public during the commenting windows for SEP2016-00029. Mr. Gumz did not lawfully include the October 2015 wetland report into the complete project file on August 9, 2016; rather, Mr. Gumz received another copy of the October 2015 wetland report on October 17, 2016 and then scanned-in the document into planning files for SEP2016-00029. By belatedly adding the October 2015 wetland report to the planning files for SEP2016-00029, Mr. Gumz performed a flagrant violation of the State Growth Management Act. Mr. Gumz also violated SEPA rules and knowingly participated in well-documented violations of the Federal Clean Water Act.

Mr. Gumz is a member of the Yakima County planning department, an agency with jurisdiction for SEP2016-00029; however, a number of other agencies also have jurisdiction for this same project. The majority of project elements for SEP2016-00029 (Shaw Creek flood control project) are within the jurisdiction of the City of Yakima; the City of Yakima is subject to a LUPA injunction, barring issuance of a SEPA authorization involving Shaw Creek. Yakima County planning officials are subject to the same LUPA injunction when Mr. Gumz and other officials project authority into the jurisdiction of the City of Yakima. In other words, Yakima County officials may not

lawfully issue a SEPA authorization for a Shaw Creek project due to the LUPA injunction barring development.

The LUPA injunction was issued within Superior Court by Judge Hahn who reviewed significant evidence that the environment of Shaw Creek was preemptively destroyed in 2012 at the Bainter site. Mr. Greg Bainter (Bainter Group LLC), proposed commercial development at the site following the unlawful relocation of Shaw Creek into a man-made ditch, the unlawful filling of the jurisdictional Shaw Creek watercourse within excavation spoils, and the unlawful filling of jurisdictional Shaw Creek wetlands. Furthermore, Mr. Jeff Legg (Yakima County) planned and implemented the Shaw Creek Clean Water Act violations of 2012 at the Bainter site by utilizing an unlawful prescription scheme. The prescription scheme of 2012 involved Mr. Jeff Legg (Yakima County), Mr. Greg Bainter (Bainter Group LLC), Mr. Eric Bartrand (WDFW), and Mr. Jeff Peters (formerly of the City of Yakima; now terminated).

In 2016, during the SEPA process, Mr. Byron Gumz (Yakima County) projected authority into the jurisdiction of the City of Yakima and, at the same time, simply ignored the LUPA injunction barring issuance of a SEPA authorization involving Shaw Creek. The LUPA injunction requires that a developer “consider” both the location of the jurisdictional Shaw Creek watercourse and the location of the man-made ditch under unlawful use (Bainter site). Mr. Gumz and Yakima County processed the SEPA materials for SEP2016-00029 as if the man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that the man-made ditch under unlawful use is not the location of the jurisdictional Shaw Creek watercourse. Furthermore, Mr. Byron Gumz is mandated to utilize the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to determine the lawful location of the floodway and the included jurisdictional watercourse. Mr. Byron Gumz ignored the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps and processed the SEPA application for SEP2016-00029 as if the man-made ditch were the location for the jurisdictional watercourse.

Mr. Byron Gumz simply ignored NFIP regulations that require the applicant/developer to revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to developing the project site. The applicant/developer for SEP2016-00029 (i.e. anonymous person; Mr. Cliff Bennett; Yakima County; FCZD) possesses the duty to deal directly with FEMA, creating a LOMR (Letter of Map Revision). The LOMR will then be used to revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Currently the applicant/developer notes that “conditions on the ground” differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Specifically, water is unlawfully flowing within a man-made ditch under unlawful use; water is not flowing within the location of the jurisdictional watercourse due to the fact that Shaw Creek was filled with excavation spoils in 2012 (i.e. a well-documented violation of the Federal Clean Water Act). The developer for SEP2016-00029 possesses the duty to revise the FEMA maps prior to moving forward with development.

Mr. Gumz and Yakima County violated NFIP regulations by processing the SEPA application materials for SEP2016-00029 without requiring the developer to revise FEMA maps. At the same time, Mr. Gumz was aware that Yakima County participated in the 2012 Shaw Creek Clean Water Act violations where the waters of Shaw Creek were diverted into the man-made ditch under unlawful use. As a result of the well-documented Clean Water Act violations, the developer (Yakima County) must obtain a retroactive COE 404 Fill & Dredge permit to cover the relocation of Shaw Creek into a ditch. Only following the lawful issuance of a COE 404 Fill & Dredge permit will FEMA make revisions to the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps.

The problem for Mr. Gumz and Yakima County becomes greater when considering the issuance of a citizen lawsuit, filed under the Federal Clean Water Act. Mr. Gumz and Yakima County were aware of the 2012 Shaw Creek Clean Water Act violations during the SEPA process for SEP2016-00029. At this point, the USACE would not be in a position to issue a retroactive COE 404 Fill & Dredge permit to Yakima County to cover for the well-documented Clean Water Act violations of 2012. Rather, Clean Water Act violations of 2012 are now subject to the judicial ruling of a Federal judge within Federal

District Court. Enforcement of the Federal Clean Water Act is mandatory within Federal District Court. Given that a COE 404 Fill & Dredge permit was not issued in 2012, violations of the CWA did occur. Within Federal District Court, violators of the CWA must pay fines. In addition, where feasible (i.e. Bainter site of Shaw Creek), site restoration must occur.

An additional convulsion involves well-documented flooding of the adjacent community that occurred on February 21, 2017. The unlawful relocation of the waters of Shaw Creek into a man-made ditch in 2012 placed the adjacent community at increased risk of flooding due to insufficient conveyance capacity of the man-made ditch. The site of the man-made ditch is nearly level, such that water pools within the ditch. During early season runoff, pooling of water within the man-made ditch allows for the ditch to fill beyond capacity; overbank flooding occurs when the capacity of the ditch is exceeded as on February 21, 2017. As noted, on February 21, 2017, early season runoff filled the man-made ditch under unlawful use to a point where overbank flooding carried water to the south and to the east. Water then flowed in a newly recognized floodway; waters flowed into homes within the Cottonwood Grove subdivision. In addition, roadways became flooded with pooling or ponds forming between homes and within roadways.

A significant “flood-fight” occurred at the Cottonwood Grove subdivision at the time of overbank flooding from the man-made ditch under unlawful use (Bainter site). Photos and narratives affirm the well-documented flood-event. Emergency excavations at the Bainter site (i.e. excavation development of the Bainter site) occurred on February 21, 2017 and during days following the initial flood event. Sand-bagging occurred along the man-made ditch (Bainter site). Emergency crews from the City of Yakima and from Yakima County responded to fight the flooding. Flood-fight and clean-up occurred for over a month. Water was pumped from homes for weeks. Destroyed insulation and building materials were removed from homes for nearly a month. Sewage filled surface waters flowed into the adjacent community.

The flood-event of 2017 (i.e. February 21, 2017) highlights the fact that the “adjacent community” was not provided with lawful notification of the relocation of Shaw Creek in

2012. The 2012 Shaw Creek relocation was a secretive project that was not made known to members of the public. NFIP regulations also mandate formal legal notification to the adjacent community at the time of relocation of a jurisdictional watercourse such as Shaw Creek. In fact, NFIP regulations mandate formal legal notification to Ecology, to FEMA, and to the adjacent community when a watercourse is relocated. In 2012, the mandatory legal notification to Ecology, to FEMA and to the adjacent community did not occur. In sum, the adjacent community was not informed about the increased risk of flooding when Shaw Creek was relocated into a man-made ditch within insufficient conveyance capacity in 2012.

In 2016, Mr. Gumz and other Yakima County officials could not predict the flood-event of February 21, 2017; however, Mr. Gumz and Yakima County were aware that Shaw Creek was relocated into a ditch. In addition, Mr. Gumz and Yakima County possessed a duty to provide formal legal notice to the adjacent community; the adjacent community was placed at-risk of flooding and the adjacent community was denied the right to be lawfully informed about the secretive relocation of Shaw Creek into an insufficient ditch. Mr. Gumz and Yakima County simply ignored the NFIP regulations mandating formal legal notification to the adjacent community (i.e. mandating formal legal notice that Shaw Creek was relocated into a ditch in 2012).

Mr. Byron Gumz and Yakima County processed the SEPA application for SEP2016-00029 leading to the issuance of an incomplete Final SEPA DNS on November 16, 2016. The content of the incomplete Final SEPA DNS for SEP2016-00029 was insufficient in the “appeal” section of the document. Mr. Gumz and Yakima County, per SEPA rules, must include appeal “date” information and appeal “location” information; the “date” and “location” information was not included in the incomplete Final SEPA DNS for SEP2016-00029.

**Mr. Terry Keenhan (Yakima County)**

Mr. Terry Keenhan is the supervisor of Mr. Cliff Bennett. Mr. Terry Keenhan is aware of the prescription scheme used by Yakima County to repeatedly violate the Federal Clean Water Act. In fact, Mr. Terry Keenhan was identified as the “applicant/developer” in the Wide Hollow Creek dredging project where an unlawful prescription was created by Mr. Eric Bartrand (WDFW). Mr. Keenhan was informed in advance that Yakima County officials would perform a flagrant violation of the State Growth Management Act by disallowing members of the public from knowing about the content of the October 2015 wetland report during the SEPA process for SEP2016-00029. Mr. Keenhan was aware that Yakima County officials would participate in a scheme to prevent enforcement of the Federal Clean Water Act by “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029. And Mr. Keenhand was aware that Yakima County officials would participate in a scheme to achieve wealth as a result of violations of the Federal Clean Water Act by “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029. Mr. Keenhan was aware in advance that members of the public would not receive lawful information about appeal “date” and appeal “location” within the content of the incomplete Final SEPA DNS for SEP2016-00029. Under the direction and leadership of Mr. Terry Keenhan, several officials within the Flood Control Zone District have been entangled with violations of the Federal Clean Water Act including: Mr. Jeff Legg, Mr. Cliff Bennett, and Ms. Jeanna Paluzzi. Under the direction and leadership of Mr. Terry Keenhan, Yakima County Surface Water Division officials fail to comply with NFIP regulations. The following NFIP violations have occurred within the Surface Water Division:

- Failure to require all lawful permits for project within regulated FEMA floodplains.
- Failure to protect critical area features within regulated FEMA floodplains in accordance with minimal Federal standards.



- Failure to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway and the location of the jurisdictional Shaw Creek watercourse within the floodway.
- Failure to provide mandatory notification to FEMA, to Ecology, and to the adjacent community at the time of the Shaw Creek watercourse relocation.
- Failure to lawfully replace wetlands in a one-to-one fashion at the time of wetland destruction (i.e. Shaw Creek project of 2012).
- Failure to lawfully provide for compensatory storage at the time of planned destruction of the Shaw Creek FEMA 100-year floodplain.
- Unlawful plan to disrupt the hyporheic zone of Shaw Creek.
- Unlawful plan to destroy 100% of trees along the course of Wide Hollow Creek.
- Unlawful plan to destroy charted floodways for the purpose of rapid urban development within floodways.

In addition, under the direction and leadership of Mr. Terry Keenhan, members of the Flood Control Zone District (i.e. Mr. Jeff Legg, Mr. Cliff Bennett, Ms. Jeanna Paluzzi) participate in a prescription scheme that is used to plan and implement violations of the Federal Clean Water Act. At some point, the leadership of the Yakima County Surface Water Division must take responsibility for the repeated violation of law by the majority of the personnel working within the agency. Mr. Terry Keenhan must bear the responsibility for violations of the Clean Water Act, violations of the Growth Management Act, violations of FIFRA, and violations of the NFIP regulations by personnel within his department.

**Ms. Jeanna Paluzzi (Yakima County)**

Ms. Jeanna Paluzzi utilized the prescription scheme, with Mr. Eric Bartrand, to plan and implement unlawful dredging and channel excavation of Wide Hollow Creek. The Yakima County project occurred in 2014 and 2015, involving dredging of the main channel of the jurisdictional Wide Hollow Creek and the construction of finger-channels directing water to the north, between rows of stumps. A required COE 404 Fill & Dredge permit was not obtained for the project involving the dredging of a “WOTUS” (Water of the United States); to the contrary, only an unlawful WDFW prescription was obtained through Mr. Eric Bartrand and the WDFW.

Ms. Jeanna Paluzzi was in charge of the Wide Hollow Creek project at S. 96<sup>th</sup> Avenue; the project is also known as “stump alley” due to the fact that only stumps remain within the Riparian Habitat Zones to the north and to the south of the jurisdictional watercourse. In violation of FIFRA, Ms. Jeanna Paluzzi planned the poisoning and destruction of 100% of trees along Wide Hollow Creek by using a toxic herbicide called imazapyr. Use of imazapyr within or near surface waters (i.e. Wide Hollow Creek) is unlawful (i.e. violation of FIFRA). The destruction of more than 35% of trees along the jurisdictional Shaw Creek watercourse was a violation of NFIP regulations. In sum, the “stump alley” project involved the violation of three Federal laws as follows: 1) Clean Water Act 2) FIFRA 3) NFIP regulations.

**Mr. Thomas Carroll (Yakima County planning department)**

Mr. Thomas Carroll is a senior planner at Yakima County who, in 2016, was delegated to sign the incomplete Final SEPA DNS for SEP2016-00029 (Shaw Creek and Wide Hollow Creek flood project). Mr. Thomas Carroll is not the SEPA responsible official for Yakima County; however, Mr. Carroll was delegated to sign the document on November 16, 2016. Mr. Thomas Carroll possesses significant conflicts of interest when signing the incomplete Final SEPA DNS for SEP2016-00029 (Shaw Creek and Wide Hollow Creek flood project). Mr. Carroll is employed by Yakima County; Yakima County will access \$2.7 million in FEMA grant funds and \$500,000 in Centennial grant funds when local SEPA authorization and critical area permits are issued. Mr. Carroll is likely motivated to ignore significant adverse environmental impacts associated with SEP2016-00029. In fact, Mr. Carroll's participation in violations of law are largely explained the fact that Mr. Carroll is employed by Yakima County. Since Yakima County will access over \$3 million in funding, Mr. Carroll provided material assistance to Yakima County's scheme to gain wealth following well-documented violations of the Federal Clean Water Act. Similarly, the flagrant violation of the State Growth Management Act (i.e. incorporation by reference of the October 2015 wetland report) and violations of NFIP regulations (Federal law) are also explained by the employer-employee relationship between Mr. Carroll and Yakima County.

Mr. Thomas Carroll is entangled with violations of law during the SEPA process for SEP2016-00029 including the following:

- Mr. Thomas Carroll participated in the flagrant violation of the State Growth Management Act by assisting with the concealment of the October 2015 wetland report during commenting windows and then “slipping-in” the report into project files nearly two months after the date that the SEP2016-00029 file was “complete”.
- By unlawfully “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr.

Thomas Carroll participated in the “scheme to prevent enforcement of the Federal Clean Water Act”.

- By unlawfully “incorporating by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Thomas Carroll participated in the “scheme to achieve wealth resulting from violations of the Federal Clean Water Act”. Specifically, Yakima County knowingly planned and implemented Shaw Creek Clean Water Act violations in an effort to gain the release of \$2.7 million in FEMA PDM grant funding and \$0.5 million of Centennial grant funding.
- Mr. Thomas Carroll participated in the planned destruction of jurisdictional wetlands within portions of the project area (SEP2016-00029) that were never studied along the western portion of Wide Hollow Creek; this was another planned violation of the Federal Clean Water Act.
- Mr. Thomas Carroll participated in the planned relocation of Wide Hollow Creek into a roadside ditch, a secretive project element of SEP2016-00029) that was never made known to the public; this was another planned violation of the Federal Clean Water Act.
- Mr. Thomas Carroll participated in a violation of SEPA rules (State law) by failing to include “date” and “location” information into the content of the incomplete Final SEPA DNS for SEP2016-00029.
- Mr. Thomas Carroll violated NFIP regulations by failing to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the Shaw Creek floodway (with the included jurisdictional watercourse).

During the SEPA process, Mr. Gumz received an unsigned SEPA checklist from an anonymous individual on July 20, 2016; this fact was known to Mr. Thomas Carroll when he signed the incomplete SEPA DNS for SEP2016-00029 on November 16, 2016. Instead of mandating the return of the unsigned application to the developer, Mr. Thomas Carroll signed the incomplete SEPA DNS for SEP2016-00029 on November 16, 2016. The applicant/developer also did not possess ownership of land required to perform the

project; this fact was known to Mr. Thomas Carroll. Regardless, Mr. Thomas Carroll signed the incomplete SEPA DNS for SEP2016-00029 on November 16, 2016 despite the fact that Yakima County does not possess ownership or control over the project site; specifically, required easements and land sale agreements do not exist.

Mr. Thomas Carroll participated in an evolving scheme to prevent members of the public from filing an appeal for SEP2016-00029. After determination that the unsigned application materials were complete on August 9, 2016, a Yakima County legal notice was issued to the public; the legal notice informed members of the public of a normal and customary 14-day appeal window following issuance of the Final SEPA DNS. However, on November 16, 2016, the date of issuance of the incomplete Final SEPA DNS for SEP2016-00029, Mr. Thomas Carroll and Yakima County indicated that members of the public were disallowed from filing an appeal under SEPA; on November 16, 2016, Yakima County (and Mr. Thomas Carroll) did not allow for a 14-day appeal window for members of the public.

Mr. Thomas Carroll was aware of the content of the October 2015 wetland report containing significant information about three critical issues. First, significant portions of the project area were never studied for the presence of wetlands. Second, 58-jurisdictional wetland would be destroyed as a result of implementation of SEP2016-00029. Third, a man-made ditch under unlawful use was unlawfully determined as being the location of the jurisdictional Shaw Creek watercourse. Mr. Thomas Carroll is mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain map to identify the location of the Shaw Creek floodway and the included location of the jurisdictional Shaw Creek watercourse.

Mr. Thomas Carroll was fully aware that the content of the October 2015 wetland report was concealed from members of the public during the commenting windows for SEP2016-00029. In fact, Ms. Gwen Clear (Ecology) submitted an agency commenting letter, informing Yakima County that they were concealing the October 2015 wetland report from members of the public. Furthermore, Mr. Thomas Carroll and Yakima County were informed by Ecology that issuance of a SEPA DNS for SEP2016-00029

was incorrect due to the fact that 58-jurisdictional wetlands would be destroyed as a result of implementation of the project. At best, Ecology affirmed that a “mitigated SEPA DNS” would be the correct action by Mr. Thomas Carroll. Instead, Mr. Thomas Carroll ignored the commenting letter from Ecology and simply issued an incomplete Final SEPA DNS for SEP2016-00029 that was signed on November 16, 2016.

Mr. Thomas Carroll was aware that the October 2015 wetland report was not lawfully included within the “complete” project file on August 9, 2016; rather, Mr. Thomas Carroll was aware that a copy of the October 2015 wetland report was received by planning official on October 17, 2016 and then scanned-into planning files for SEP2016-00029. Mr. Thomas Carroll participated in a flagrant violation of the State Growth Management Act by signing the incomplete Final SEPA DNS for SEP2016-00029, knowing that the October 2015 wetland report was concealed from members of the public during commenting windows.

Mr. Thomas Carroll is a member of the Yakima County planning department, an agency with jurisdiction for SEP2016-00029; however, a number of other agencies also have jurisdiction for this same project. The majority of project elements for SEP2016-00029 (Shaw Creek flood control project) are within the jurisdiction of the City of Yakima; the City of Yakima is subject to a LUPA injunction, barring issuance of a SEPA authorization involving Shaw Creek. Yakima County planning officials are subject to the same LUPA injunction when Mr. Thomas Carroll and other officials project authority into the jurisdiction of the City of Yakima. In other words, Yakima County officials (i.e. Mr. Thomas Carroll) may not lawfully issue a SEPA authorization for a Shaw Creek project due to the LUPA injunction barring development. Mr. Thomas Carroll and Yakima County demonstrated contempt for the rule of law by ignoring the LUPA injunction, barring issuance of a SEPA authorization involving the Bainter site of Shaw Creek.

The LUPA injunction was issued within Superior Court by Judge Hahn who reviewed significant evidence that the environment of Shaw Creek was preemptively destroyed in 2012 at the Bainter site. Mr. Greg Bainter (Bainter Group LLC), proposed commercial

development at the site following the unlawful relocation of Shaw Creek into a man-made ditch, the unlawful filling of the jurisdictional Shaw Creek watercourse within excavation spoils, and the unlawful filling of jurisdictional Shaw Creek wetlands. Furthermore, Mr. Jeff Legg (Yakima County) planned and implemented the Shaw Creek Clean Water Act violations of 2012 at the Bainter site by utilizing an unlawful prescription scheme. The prescription scheme of 2012 involved Mr. Jeff Legg (Yakima County), Mr. Greg Bainter (Bainter Group LLC), Mr. Eric Bartrand (WDFW), and Mr. Jeff Peters (formerly of the City of Yakima; now terminated). Mr. Thomas Carroll demonstrated contempt for the rule of law by ignoring the LUPA injunction, barring issuance of a SEPA authorization involving Shaw Creek.

In 2016, during the SEPA process, Mr. Thomas Carroll (Yakima County) projected authority into the jurisdiction of the City of Yakima and, at the same time, simply ignored the LUPA injunction barring issuance of a SEPA authorization involving Shaw Creek. The LUPA injunction requires that a developer “consider” both the location of the jurisdictional Shaw Creek watercourse and the location of the man-made ditch under unlawful use (Bainter site). Mr. Thomas Carroll and Yakima County processed the SEPA materials for SEP2016-00029 as if the man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that the man-made ditch under unlawful use is not the location of the jurisdictional Shaw Creek watercourse. Furthermore, Mr. Thomas Carroll is mandated to utilize the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to determine the lawful location of the floodway and the included jurisdictional watercourse. Mr. Thomas Carroll ignored the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps and processed the SEPA application for SEP2016-00029 as if the man-made ditch were the location for the jurisdictional watercourse.

Mr. Thomas Carroll simply ignored NFIP regulations that require the applicant/developer to revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to developing the project site. The applicant/developer for SEP2016-00029 (i.e. anonymous person; Mr. Cliff Bennett; Yakima County; FCZD) possesses the duty to deal

directly with FEMA, creating a LOMR (Letter of Map Revision). The LOMR will then be used to revise the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Currently the applicant/developer notes that “conditions on the ground” differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Specifically, water is unlawfully flowing within a man-made ditch under unlawful use; water is not flowing within the location of the jurisdictional watercourse due to the fact that Shaw Creek was filled with excavation spoils in 2012 (i.e. a well-documented violation of the Federal Clean Water Act). The developer for SEP2016-00029 possesses the duty to revise the FEMA maps prior to moving forward with development.

Mr. Thomas Carroll and Yakima County violated NFIP regulations by signing the incomplete Final SEPA DNS for SEP2016-00029 without requiring the developer to revise FEMA maps. At the same time, Mr. Thomas Carroll was aware that Yakima County participated in the 2012 Shaw Creek Clean Water Act violations where the waters of Shaw Creek were diverted into the man-made ditch under unlawful use. As a result of the well-documented Clean Water Act violations, the developer (Yakima County) must obtain a retroactive COE 404 Fill & Dredge permit to cover the relocation of Shaw Creek into a ditch. Only following the lawful issuance of a COE 404 Fill & Dredge permit will FEMA make revisions to the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps.

The problem for Mr. Thomas Carroll and Yakima County becomes greater when considering the issuance of a citizen lawsuit, filed under the Federal Clean Water Act. Mr. Thomas Carroll and Yakima County were aware of the 2012 Shaw Creek Clean Water Act violations during the SEPA process for SEP2016-00029. At this point, the USACE would not be in a position to issue a retroactive COE 404 Fill & Dredge permit to Yakima County to cover for the well-documented Clean Water Act violations of 2012. Rather, Clean Water Act violations of 2012 are now subject to the judicial ruling of a Federal judge within Federal District Court. Enforcement of the Federal Clean Water Act is mandatory within Federal District Court. Given that a COE 404 Fill & Dredge permit was not issued in 2012, violations of the CWA did occur. Within Federal District Court,



violators of the CWA must pay fines. In addition, where feasible (i.e. Bainter site of Shaw Creek), site restoration must occur.

An additional convolution involves well-documented flooding of the adjacent community that occurred on February 21, 2017. The unlawful relocation of the waters of Shaw Creek into a man-made ditch in 2012 placed the adjacent community at increased risk of flooding due to insufficient conveyance capacity of the man-made ditch. The site of the man-made ditch is nearly level, such that water pools within the ditch. During early season runoff, pooling of water within the man-made ditch allows for the ditch to fill beyond capacity; overbank flooding occurs when the capacity of the ditch is exceeded as on February 21, 2017. As noted, on February 21, 2017, early season runoff filled the man-made ditch under unlawful use to a point where overbank flooding carried water to the south and to the east. Water then flowed in a newly recognized floodway; waters flowed into homes within the Cottonwood Grove subdivision. In addition, roadways became flooded with pooling or ponds forming between homes and within roadways.

A significant “flood-fight” occurred at the Cottonwood Grove subdivision at the time of overbank flooding from the man-made ditch under unlawful use (Bainter site). Photos and narratives affirm the well-documented flood-event. Emergency excavations at the Bainter site (i.e. excavation development of the Bainter site) occurred on February 21, 2017 and during days following the initial flood event. Sand-bagging occurred along the man-made ditch (Bainter site). Emergency crews from the City of Yakima and from Yakima County responded to fight the flooding. Flood-fight and clean-up occurred for over a month. Water was pumped from homes for weeks. Destroyed insulation and building materials were removed from homes for nearly a month. Sewage filled surface waters flowed into the adjacent community.

The flood-event of 2017 (i.e. February 21, 2017) highlights the fact that the “adjacent community” was not provided with lawful notification of the relocation of Shaw Creek in 2012. The 2012 Shaw Creek relocation was a secretive project that was not made known to members of the public. NFIP regulations also mandate formal legal notification to the adjacent community at the time of relocation of a jurisdictional watercourse such as Shaw

Creek. In fact, NFIP regulations mandate formal legal notification to Ecology, to FEMA, and to the adjacent community when a watercourse is relocated. In 2012, the mandatory legal notification to Ecology, to FEMA and to the adjacent community did not occur. In sum, the adjacent community was not informed about the increased risk of flooding when Shaw Creek was relocated into a man-made ditch within insufficient conveyance capacity in 2012.

In 2016, Mr. Thomas Carroll, and other Yakima County officials, could not predict the flood-event of February 21, 2017; however, Mr. Gumz and Yakima County were aware that Shaw Creek was relocated into a ditch. In addition, Mr. Thomas Carroll and Yakima County possessed a duty to provide formal legal notice to the adjacent community; the adjacent community was placed at-risk of flooding and the adjacent community was denied the right to be lawfully informed about the secretive relocation of Shaw Creek into an insufficient ditch. Mr. Thomas Carroll and Yakima County simply ignored the NFIP regulations mandating formal legal notification to the adjacent community (i.e. mandating formal legal notice that Shaw Creek was relocated into a ditch in 2012).

Mr. Thomas Carroll signed the incomplete Final SEPA DNS SEP2016-00029 on November 16, 2016. The content of the incomplete Final SEPA DNS for SEP2016-00029 was insufficient in the “appeal” section of the document. Mr. Thomas Carroll and Yakima County, per SEPA rules, must include appeal “date” information and appeal “location” information; the “date” and “location” information was not included in the incomplete Final SEPA DNS for SEP2016-00029.

As previously mentioned, Mr. Thomas Carroll was delegated to sign the incomplete Final SEPA DNS for SEP2016-00029 despite the fact that Mr. Carroll is not the SEPA responsible official for Yakima County; in truth, Mr. Lynn Deitrick is the SEPA responsible official for Yakima County. Regardless, Mr. Carroll possessed the legal duty to ensure that significant adverse environmental impacts associated with SEP2016-00029 were identified during the SEPA process. Yet Mr. Thomas Carroll was aware of the fact that the significant adverse impacts to wetlands were concealed from members of the public during commenting windows. Rather than stopping the SEPA process to allow for

full-disclosure of adverse environmental impacts to wetlands, Mr. Carroll simply “incorporated by reference” the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029. As such, Mr. Carroll participated in a flagrant violation of the State Growth Management Act. The belated introduction of the October 2015 wetland report into project files was also a violation of SEPA rules (State law).

Mr. Thomas Carroll possessed limited authority over the project area. In the present scenario, the applicant/developer (Yakima County) did not possess ownership or control of land within the project area that is required to implement the project. As a delegated authority figure who might sign the SEPA authorization, Mr. Carroll possessed authority only for the limited project elements within unincorporated Yakima County. Most of the project elements for SEP2016-00029 are within the jurisdiction of the City of Yakima. So the City of Yakima is another “agency with jurisdiction”. Within project files for SEP2016-00029, no “lead agency agreements” exist between agencies with jurisdiction. For example, lead agency agreements would be required between the City of Yakima and Yakima County for SEP2016-00029; no such lead agency agreements appear to exist and these documents certainly are not within planning files for SEP2016-00029.

Officials at Yakima County (i.e. Mr. Paul McIlrath) state that there are two lead agencies. First, Yakima County planning department is said to be a “lead agency”. Second, the Yakima County Flood Zone Control District is said to be a “lead agency”. No “lead agency agreements” exist within planning department files for SEP2016-00029 between Yakima County planning department and the Yakima County Flood Zone Control District. Other agencies with jurisdiction exist as well.

Mr. Eric Bartrand and the WDFW created a letter affirming that the “lead agency” for the Shaw Creek flood control project is the Washington Department of Fish & Wildlife. Mr. Thomas Carroll and Yakima County planning department appear to ignore the fact that the WDFW has indicated a “lead agency” role with the Shaw Creek flood control project. No lead agency agreements exist between the WDFW and Yakima County planning department.

The State of Washington Department of Ecology is another agency with jurisdiction. One project element of SEP2016-00029 is the dredging and excavation of the terminus of Shaw Creek. Prior to issuance of permits, the terminus of Shaw Creek was excavated and dredged. Furthermore, evidence of unlawful hyporheic zone disruption occurred when the dredging of the terminus of Shaw Creek occurred. Ecology possesses jurisdiction over the site of documented, unlawful dredging of Shaw Creek where hyporheic zone disruption occurred. Ecology is an agency with jurisdiction over a portion of the project area of SEP2016-00029; as such, lead agency agreements are required between Ecology and the Yakima County planning department. Lead agency agreements between Yakima County and Ecology do not exist within the Yakima County planning department file for SEP2016-00029.

Mr. Thomas Carroll signed the incomplete Final SEPA DNS on November 16, 2016 and was aware of the content of the commenting letter from Ms. Gwen Clear from the State of Washington Department of Ecology. Ms. Gwen Clear informed Mr. Thomas Carroll and informed Yakima County that the content of the October 2015 wetland report was concealed from members of the public. Specifically, Ms. Gwen Clear informed Yakima County that only the flawed and rejected January 2015 wetland report was available for inspection by members of the public. In addition, Ms. Gwen Clear informed Yakima County that issuance of a SEPA DNS, as planned by Yakima County, was incorrect due to the fact that significant adverse environmental impacts to wetlands will result from implementation of SEP2016-00029. In fact, 58-jurisdictional wetlands will be destroyed and wetland mitigation is mandated by Ecology and mandated by the USACE. Ecology affirmed that mandatory wetland mitigation will occur; for this reason, a mitigated determination of non-significance might be issued but a formal SEPA DNS could not be issued. Mr. Thomas Carroll ignored the Ecology commenting letter and issued a formal SEPA DNS.

By issuing the incomplete Final SEPA DNS for SEP2016-00029, Mr. Thomas Carroll incorporated by reference the content of the October 2015 wetland report affirming that 58-jurisdictional wetlands will be destroyed. By incorporating by reference the content of

the October 2015 wetland report into the Final SEPA DNS for SEP2016-00029, Mr. Carroll affirmed that 58-jurisdictional wetlands will be destroyed yet paradoxically issued a statement that the destruction of these wetlands do not represent a significant adverse environmental impact (i.e. issuance of a SEPA DNS). Mr. Thomas Carroll did not issue a mitigated determination of non-significance as stated by Ecology. Rather, Mr. Carroll simultaneously affirmed that significant adverse impacts will occur to wetlands while issuing a SEPA authorization affirming that no significant adverse impacts will occur.

Mr. Thomas Carroll, by signing the incomplete Final SEPA DNS for SEP2016-00029, participated in violations of law as follows:

- Adding the October 2015 to planning files two months after the files were “complete” disallowed commenting by members of the public; Mr. Thomas Carroll participated in a flagrant violation of the State Growth Management Act.
- Adding the October 2015 to planning files two months after the files were “complete” violated SEPA rules; Mr. Thomas Carroll participated in a violation of State of Washington law (SEPA rules).
- When incorporating by reference the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Thomas Carroll participated in a scheme to prevent enforcement of the Federal Clean Water Act following environmental crimes of 2012.
- When incorporating by reference the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Thomas Carroll participated in a scheme to achieve wealth resulting from well-documented violations of the Federal Clean Water Act (Shaw Creek; 2012).
- Mr. Thomas Carroll is mandated to use the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway with the included jurisdictional watercourse; Mr. Thomas Carroll failed to comply with NFIP regulations and floodplain ordinances by using the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway with the included jurisdictional watercourse. Rather, Mr.

Thomas Carroll unlawfully indicates that a man-made ditch under unlawful use is the location of the jurisdictional watercourse.

- Mr. Thomas Carroll affirmed unsigned application materials submitted by an anonymous person; Mr. Carroll violated State law (SEPA rules) mandating that application materials are signed by the applicant.
- Mr. Thomas Carroll violated State laws requiring the applicant/developer for SEP2016-00029 to possess ownership or control over the project site; the applicant/developer does not possess required ownership or control of real property Mr. Thomas Carroll issued an incomplete Final SEPA DNS for SEP2016-00029 to an anonymous individual who does not possess ownership or control of the project site.
- Mr. Thomas Carroll and Yakima County officials were aware of secretive project elements and unlawful project elements of SEP2016-00029 including the filling of a portion of Wide Hollow Creek when the bridge is removed at S. 91<sup>st</sup> Avenue. The failure of Mr. Thomas Carroll (Yakima County) to inform members of the public of secretive project elements is a violation of the State Growth Management Act. The planned but secretive filling of Wide Hollow Creek appears to be a planned violation of the Federal Clean Water Act. The planned but secretive filling of critical habitat for mid-Columbia steelhead appears to be a planned violation of the Federal Endangered Species Act.
- Mr. Thomas Carroll and Yakima County officials were aware of secretive project elements and unlawful project elements of SEP2016-00029 including the relocation of Wide Hollow Creek into a roadside ditch when the bridge is removed at S. 91<sup>st</sup> Avenue. The failure of Mr. Thomas Carroll (Yakima County) to inform members of the public of secretive project elements is a violation of the State Growth Management Act. The planned but secretive relocation of Wide Hollow Creek appears to be a planned violation of the Federal Clean Water Act.
- Mr. Thomas Carroll and Yakima County officials were aware of the planned destruction of 100% of trees along Wide Hollow Creek which is a planned violation of NFIP regulations (i.e. violation of Federal law).

- Mr. Thomas Carroll and Yakima County officials were aware of the planned destruction of the majority of the Shaw Creek FEMA 100-year Floodplain without lawful compensatory storage; the planned destruction of nearly the entire Shaw Creek FEMA 100-year Floodplain without compensatory storage is a planned violation of NFIP regulations (i.e. violation of Federal law).
- Mr. Thomas Carroll and Yakima County officials were aware of the planned disruption of the Shaw Creek hyporheic zone which is a planned violation of NFIP regulations (i.e. violation of Federal law). Hyporheic zone disruption, as planned by Yakima County, is an adverse environmental impact that cannot be mitigated by the applicant/developer. Since the adverse environmental impact (hyporheic zone disruption; discharge of sewage into the drinking water supply of Yakima) cannot be mitigated by the developer (Yakima County), the environmental impact is barred by NFIP regulations (i.e. barred by Federal law).
- Mr. Thomas Carroll, by signing the incomplete Final SEPA DNS for SEP2016-00029 indicates the existence of “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas” at the Bainter site; the existence of “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas”, per Mr. Carroll, is disputed due to the fact that a man-made ditch under unlawful use does not possess jurisdictional wetlands that are under the protection of the Federal Clean Water Act. Mr. Thomas Carroll demonstrates contempt for the rule of law by failing to allow for the completion of Clean Water Act litigation designed to restore the Bainter site following well-documented environmental crimes (Clean Water Act violations; 2012; critical area violations). Clean Water Act litigation is designed to abate the use of the man-made ditch under unlawful use, remove unlawful fill from the location of the jurisdictional watercourse, and restore flows of water to the jurisdictional watercourse. Following site restoration, the man-made ditch wetlands will likely be dewatered and no longer exist.
- Mr. Thomas Carroll and other Yakima County officials are aware of the existence of forensic wetlands that were preemptively filled and destroyed in 2012; Yakima County officials planned and implemented the illegal destruction of Shaw Creek jurisdictional wetlands. Mr. Thomas Carroll participated in a scheme to prevent

- enforcement of the Clean Water Act (i.e. the illegal placement of fill into jurisdictional wetlands) by signing the incomplete SEPA DNS for SEP2016-00029.
- Mr. Thomas Carroll incorporated documents into the incomplete Final SEPA DNS for SEP2016-00029 that unlawfully demonstrate that the Shaw Creek watercourse flows outside of the charted floodway; by definition, the jurisdictional Shaw Creek watercourse must flow within (not “outside of” or “apart from”) the location of the charted floodway. Mr. Thomas Carroll participated in a scheme to prevent enforcement of the Clean Water Act by unlawfully indicating that the location of the Shaw Creek watercourse flows outside of the charted floodway (Bainter site).
  - Mr. Thomas Carroll incorporated documents into the incomplete Final SEPA DNS for SEP2016-00029 that unlawfully demonstrate that the Shaw Creek watercourse flows outside of the Shaw Creek FEMA 100-year floodplain (per regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps); the jurisdictional Shaw Creek watercourse must flow within (not “outside of” or “apart from”) the location of the charted FEMA 100-year floodplain. Mr. Thomas Carroll participated in a scheme to prevent enforcement of the Clean Water Act by unlawfully indicating that the location of the Shaw Creek watercourse flows outside of the Shaw Creek FEMA 100-year floodplain (Bainter site).
  - Mr. Thomas Carroll signed an incomplete Final SEPA DNS for SEP2016-00029 where unlawful and insufficient Riparian Habitat Zones would be created along Shaw Creek and along Wide Hollow Creek. NFIP regulations mandate 150-foot wide Riparian Habitat Zones while the width of the Shaw Creek Riparian Habitat Zone appears to be constricted to 35-feet in width. In addition, Yakima County will mow grass within the Shaw Creek Riparian Habitat zone; Yakima County will not protect trees within the Riparian Habitat Zones.
  - Mr. Thomas Carroll signed an incomplete Final SEPA DNS for SEP2016-00029 where unlawful of imazapyr herbicide will be used to destroy trees. The use of imazapyr to destroy trees within and near Wide Hollow Creek is an apparent



violation of FIFRA since imazapyr shall not be used within or near surface waters.

- Mr. Thomas Carroll signed an incomplete Final SEPA DNS for SEP2016-00029 where unlawful filling of Wide Hollow Creek (i.e. critical habitat for mid-Columbia steelhead) will secretly occur per Yakima County project plans. The secretive filling of habitat for an endangered species (i.e. Federal Endangered Species under the protection of the ESA) is a pre-planned violation of the Federal Endangered Species Act.
- Mr. Thomas Carroll signed an incomplete Final SEPA DNS for SEP2016-00029 where wetland studies of portions of the project area did not occur. The failure to ensure that the project site was studied for the presence of wetlands represents a violation of NFIP regulations. In addition, Mr. Thomas Carroll is unable to determine if significant adverse impact to wetlands will occur if the site has not been studied for the presence of wetlands.

Mr. Thomas Carroll has made a choice to participate in a flagrant violation of the State Growth Management Act by concealing the content of the October 2015 wetland report and then incorporating the content of the report into the incomplete Final SEPA DNS for SEP2016-00029. By incorporating the content of the report (i.e. October 2015 wetland report) into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Thomas Carroll made a decision to knowingly participate in the scheme to prevent enforcement of the Federal Clean Water Act. Simultaneously, Mr. Thomas Carroll made a decision to knowingly participate in the scheme to achieve wealth resulting from well-documented violations of the Federal Clean Water act by Yakima County. Mr. Carroll simply ignored the Ecology letter, informing him that Yakima County was concealing the content of the October 2015 wetland report and Mr. Carroll ignored the fact that significant portions of the project area were never subjected to wetland studies.

The decision to sign the incomplete Final SEPA DNS for SEP2016-00029 involved numerous procedural errors by Mr. Carroll. No one knows who submitted the SEPA application materials of July 20, 2017; no one signed the application materials. The applicant/developer did not possess required ownership or control of the project area.

Lead agency agreements are lacking within the project files for SEP2016-00029 within the planning department. The project file was deemed “complete” on August 9, 2017 but was subsequently appended (i.e. materials were illegally “slipped-in” to the file in October 2016) by Yakima County officials who concealed information from the public. Mr. Carroll and Yakima County affirmed that members of the public possessed a 14-day appeal window; however, when the incomplete Final SEPA DNS was issued, Mr. Carroll and Yakima County informed members of the public that an appeal under SEPA would not be allowed. Numerous other violations occurred during the SEPA process.

**Mr. Lynn Deitrick (Yakima County)**

Mr. Lynn Deitrick is the SEPA responsible official for Yakima County and is the supervisor of Mr. Byron Gumz and the supervisor of Mr. Thomas Carroll. Mr. Lynn Deitrick reviewed a draft of the incomplete Final SEPA DNS for SEP2016-00029 and, in fact, made revisions to the document after he studied the content. Mr. Lynn Deitrick, in early October, received the SEPA DNS for the project, reviewed the content, and made changes to the text of the document before returning the document to Mr. Carroll and Mr. Gumz. By reviewing the incomplete Final SEPA DNS for SEP2016-00029, Mr. Lynn Deitrick was aware of the planned violation of the State Growth Management Act by Yakima County. The planned GMA violation involved the addition of the October 2015 wetland report to project files nearly 2 months following a determination that the file was complete. So, Mr. Deitrick was fully aware that Yakima County concealed the content of the October 2015 wetland report from the public. In addition, Mr. Deitrick participated in the scheme to prevent enforcement of the Federal Clean Water Act; Yakima County officials inserted the unlawful information that a man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse. Mr. Deitrick, like other Yakima County officials, is mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain map to identify the location of the jurisdictional Shaw Creek watercourse. Mr. Lynn Deitrick also participated in the scheme to achieve wealth resulting from violations of the Federal Clean Water Act. Mr. Deitrick was aware that Yakima County is poised to utilize a \$2.7 million FEMA grant and a \$500,0000 Centennial grant when local authorization (i.e. SEPA) is achieved; Mr. Deitrick is aware that Yakima County participated in the Shaw Creek Clean Water Act violations of 2012. Mr. Deitrick is now in the position to affirm the unlawful content of the October 2015 wetland report, unlawfully indicating that the man-made ditch is the location of the jurisdictional Shaw Creek watercourse.

Numerous other violations of law and regulatory violations can be attributed to Mr. Lynn Deitrick and his staff in the Yakima County planning department including the following:

- Mr. Lynn Deitrick affirmed unsigned application materials submitted by an anonymous person; Mr. Lynn Deitrick violated State law (SEPA rules) mandating that application materials are signed by the applicant. Mr. Lynn Deitrick and Yakima County planning officials issued a Final SEPA DNS for SEP2016-00029 for application materials submitted on July 20, 2016 by an unknown or anonymous person who did not sign the application. The correct response for Mr. Deitrick and planning officials was to return the materials for a lawful signature. Instead, Mr. Deitrick and Yakima County planning officials processed the SEPA application, reviewed the unlawful content of the SEPA DNS (i.e. incomplete document of early October 2016), made revisions to the SEPA DNS, ignored comments from Ecology, and approved the issuance of an incomplete SEPA DNS for SEP2016-00029.
- Mr. Lynn Deitrick and Yakima County planning officials violated law requiring the applicant/developer for SEP2016-00029 to demonstrate ownership of real property or control of the property (i.e. easements); the applicant/developer does not possess ownership of the site and does not possess required easements. Regardless, Mr. Lynn Deitrick and Yakima County planning officials issued a Final SEPA DNS for SEP2016-00029 for application materials submitted on July 20, 2016 by an unknown or anonymous person who did not demonstrate required ownership or control of real property. The correct response for Mr. Deitrick and planning officials was to return the application materials until such time as the applicant/developer demonstrates ownership or control of the project site. Instead, Mr. Deitrick and Yakima County planning officials processed the SEPA application, ignored the fact that require land ownership is lacking, reviewed the unlawful content of the SEPA DNS (i.e. incomplete document of early October 2016), made revisions to the SEPA DNS, ignored comments from Ecology, and approved the issuance of an incomplete SEPA DNS for SEP2016-00029.
- Adding the October 2015 to planning files two months after the files were “complete” disallowed commenting by members of the public; Mr. Lynn Deitrick

- participated in a flagrant violation of the State Growth Management Act (i.e. GMA violation by Yakima County and by Yakima County officials).
- Adding the October 2015 to planning files two months after the files were “complete” violated SEPA rules; Mr. Lynn Deitrick participated in a violation of State of Washington law (SEPA rules).
  - When incorporating by reference the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Lynn Deitrick participated in a scheme to prevent enforcement of the Federal Clean Water Act following environmental crimes of 2012.
  - When incorporating by reference the content of the October 2015 wetland report into the incomplete Final SEPA DNS for SEP2016-00029, Mr. Lynn Deitrick participated in a scheme to achieve wealth resulting from well-documented violations of the Federal Clean Water Act (Shaw Creek; 2012).
  - Mr. Lynn Deitrick is mandated to use the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway with the included jurisdictional watercourse; Mr. Lynn Deitrick failed to comply with NFIP regulations and floodplain ordinances by using the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway with the included jurisdictional watercourse. Rather, Lynn Deitrick unlawfully indicates that a man-made ditch under unlawful use is the location of the jurisdictional watercourse.
  - Mr. Lynn Deitrick and Yakima County officials were aware of secretive project elements and unlawful project elements of SEP2016-00029 including the filling of a portion of Wide Hollow Creek when the bridge is removed at S. 91<sup>st</sup> Avenue. The failure of Mr. Lynn Deitrick (Yakima County) to inform members of the public of secretive project elements is a violation of the State Growth Management Act. The planned but secretive filling of Wide Hollow Creek appears to be a planned violation of the Federal Clean Water Act. The planned but secretive filling of critical habitat for mid-Columbia steelhead appears to be a planned violation of the Federal Endangered Species Act.

- Mr. Lynn Deitrick and Yakima County officials were aware of secretive project elements and unlawful project elements of SEP2016-00029 including the relocation of Wide Hollow Creek into a roadside ditch when the bridge is removed at S. 91<sup>st</sup> Avenue. The failure of Mr. Lynn Deitrick (Yakima County) to inform members of the public of secretive project elements is a violation of the State Growth Management Act. The planned but secretive relocation of Wide Hollow Creek appears to be a planned violation of the Federal Clean Water Act.
- Mr. Lynn Deitrick and Yakima County officials were aware of the planned destruction of 100% of trees along Wide Hollow Creek which is a planned violation of NFIP regulations (i.e. violation of Federal law).
- Mr. Lynn Deitrick and Yakima County officials were aware of the planned destruction of the majority of the Shaw Creek FEMA 100-year Floodplain without lawful compensatory storage; the planned destruction of nearly the entire Shaw Creek FEMA 100-year Floodplain without compensatory storage is a planned violation of NFIP regulations (i.e. violation of Federal law).
- Mr. Lynn Deitrick and Yakima County officials were aware of the planned disruption of the Shaw Creek hyporheic zone which is a planned violation of NFIP regulations (i.e. violation of Federal law). Hyporheic zone disruption, as planned by Yakima County, is an adverse environmental impact that cannot be mitigated by the applicant/developer. Since the adverse environmental impact (hyporheic zone disruption; discharge of sewage into the drinking water supply of Yakima) cannot be mitigated by the developer (Yakima County), the environmental impact is barred by NFIP regulations (i.e. barred by Federal law).
- Mr. Lynn Deitrick, by reviewing and affirming the incomplete Final SEPA DNS for SEP2016-00029, indicates the existence of “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas” at the Bainter site; the existence of “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas”, per Mr. Deitrick, is disputed due to the fact that a man-made ditch under unlawful use does not possess jurisdictional wetlands that are under the protection of the Federal Clean Water Act. Mr. Lynn Deitrick demonstrates contempt for the rule of law by failing to allow for the completion of Clean Water Act litigation

- designed to restore the Bainter site following well-documented environmental crimes (Clean Water Act violations; 2012; critical area violations). Clean Water Act litigation is designed to abate the use of the man-made ditch under unlawful use, remove unlawful fill from the location of the jurisdictional watercourse, and restore flows of water to the jurisdictional watercourse. Following site restoration, the man-made ditch wetlands will likely be dewatered and no longer exist.
- Mr. Lynn Deitrick and other Yakima County officials are aware of the existence of forensic wetlands that were preemptively filled and destroyed in 2012; Yakima County officials planned and implemented the illegal destruction of Shaw Creek jurisdictional wetlands. Mr. Lynn Deitrick participated in a scheme to prevent enforcement of the Clean Water Act (i.e. the illegal placement of fill into jurisdictional wetlands) by signing the incomplete SEPA DNS for SEP2016-00029.
  - Mr. Lynn Deitrick incorporated documents into the incomplete Final SEPA DNS for SEP2016-00029 that unlawfully demonstrate that the Shaw Creek watercourse flows outside of the charted floodway; by definition, the jurisdictional Shaw Creek watercourse must flow within (not “outside of” or “apart from”) the location of the charted floodway. Mr. Lynn Deitrick participated in a scheme to prevent enforcement of the Clean Water Act by unlawfully indicating that the location of the Shaw Creek watercourse flows outside of the charted floodway (Bainter site).
  - Mr. Lynn Deitrick incorporated documents into the incomplete Final SEPA DNS for SEP2016-00029 that unlawfully demonstrate that the Shaw Creek watercourse flows outside of the Shaw Creek FEMA 100-year floodplain (per regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps); the jurisdictional Shaw Creek watercourse must flow within (not “outside of” or “apart from”) the location of the charted FEMA 100-year floodplain. Mr. Lynn Deitrick participated in a scheme to prevent enforcement of the Clean Water Act by unlawfully indicating that the location of the Shaw Creek watercourse flows outside of the Shaw Creek FEMA 100-year floodplain (Bainter site).

- Mr. Lynn Deitrick reviewed, affirmed, and edited an incomplete Final SEPA DNS for SEP2016-00029 where unlawful and insufficient Riparian Habitat Zones would be created along Shaw Creek and along Wide Hollow Creek. NFIP regulations mandate 150-foot wide Riparian Habitat Zones while the width of the Shaw Creek Riparian Habitat Zone appears to be constricted to 35-feet in width. In addition, Yakima County will mow grass within the Shaw Creek Riparian Habitat zone; Yakima County will not protect trees within the Riparian Habitat Zones.
- Mr. Lynn Deitrick reviewed and affirmed an incomplete Final SEPA DNS for SEP2016-00029 where unlawful use of imazapyr herbicide will be used to destroy trees. The use of imazapyr to destroy trees within and near Wide Hollow Creek is an apparent violation of FIFRA since imazapyr shall not be used within or near surface waters.
- Mr. Lynn Deitrick reviewed and affirmed an incomplete Final SEPA DNS for SEP2016-00029 where unlawful filling of Wide Hollow Creek (i.e. critical habitat for mid-Columbia steelhead) will secretly occur per Yakima County project plans. The secretive filling of habitat for an endangered species (i.e. Federal Endangered Species under the protection of the ESA) is a pre-planned violation of the Federal Endangered Species Act.
- Mr. Lynn Deitrick reviewed and affirmed an incomplete Final SEPA DNS for SEP2016-00029 where wetland studies of portions of the project area did not occur. The failure to ensure that the project site was studied for the presence of wetlands represents a violation of NFIP regulations. In addition, Mr. Lynn Deitrick is unable to determine if significant adverse impact to wetlands will occur if the site has not been studied for the presence of wetlands.
- Mr. Lynn Deitrick reviewed and affirmed an incomplete Final SEPA DNS for SEP2016-00029 in spite of the fact that a LUPA injunction bars issuance of a SEPA authorization involving Shaw Creek (Bainter site). Mr. Lynn Deitrick demonstrates contempt for the rule of law by ignoring the LUPA injunction that applies to Yakima County when SEPA officials (Yakima County) project authority into the jurisdiction of the City of Yakima.



**Mr. Troy Haven (Yakima County)**

Mr. Troy Haven is employed by Yakima County. Mr. Haven created engineering plans for the Shaw Creek and Wide Hollow Creek flood project; these drawings were subsequently delivered to the US Army Corp of Engineers in support of an application for a COE 404 Fill & Dredge permit. The Shaw Creek engineering drawings created by Mr. Haven (Yakima County) are false and illegal. On Mr. Haven's engineering drawings, the location of the man-made ditch under unlawful use is noted as being the location of the jurisdictional Shaw Creek watercourse. Mr. Haven must utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse; the regulatory FEMA maps affirm that the location of the man-made ditch is NOT the location of the jurisdictional watercourse.

By unlawfully indicating that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse, Mr. Haven has participated in the scheme to prevent enforcement of the Federal Clean Water Act. Yakima County as an "applicant/developer" wishes to declare that the location of the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. As an "applicant/developer" for a Shaw Creek project, the developer (Yakima County) is aware that "conditions on the ground" differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Mr. Haven and other Yakima County officials do not possess the legal authority to declare that a man-made ditch is the location of the jurisdictional watercourse. Yet Mr. Haven did unlawfully indicate (on engineering plans) that the location of the man-made ditch is the location of the jurisdictional Shaw Creek watercourse.

Mr. Haven was aware that the engineering plans would be used to support a permitting application submitted to the USACE. Mr. Haven created false engineering plans that were submitted to the USACE in an effort to dupe USACE officials into believing that the location of the man-made ditch was the location of the jurisdictional Shaw Creek

watercourse. Mr. Haven participated in a scheme to prevent enforcement of the Federal Clean Water Act by creating falsified Shaw Creek engineering plans.

**Mr. Paul McIlrath (Yakima County)**

Mr. Paul McIlrath became entangled with the Shaw Creek relocation project (i.e. flood control project) at least three months prior to the submission of application materials for SEP2016-00029. Mr. McIlrath was part of a select team of Yakima County officials who planned the strategy for the SEPA process. The email of April 12, 2016 set up the strategy meeting attended by Mr. McIlrath and other high ranking officials of Yakima County. The SEPA process officially started when preliminary documents were delivered to Mr. Gumz on July 15, 2016. A few weeks later, Mr. McIlrath was provided with copies of comments submitted by Seaman, alerting Yakima County officials about numerous violations of law associated with the planned project (SEP2016-00029).

Mr. McIlrath participated in another strategy meeting in September 2016 to deal with the Shaw Creek project. In October 2016, Mr. McIlrath appears to have provided significant legal support to Mr. Leita (Yakima County commissioner) who drafted a letter to Matthew Seaman; within the letter, the legal opinion was rendered that the LUPA injunction does not apply to Yakima County officials who project SEPA authority into the jurisdiction of the City of Yakima. Several legal citations were added to the Leita letter, strongly suggesting legal input from Mr. McIlrath. Ostensibly, the legal input provided to Mr. Leita is incorrect; the LUPA injunction does, in fact, bar issuance of a SEPA authorization for SEP2016-00029 as proposed by Yakima County. In addition, by the end of October, 2016, Mr. McIlrath and other Yakima County officials were fully committed to the unlawful strategy of a SEPA process for SEP2016-00029 without also performing a review of a critical area application.

On November 4, 2016, two weeks before issuance of the incomplete Final SEPA DNS for SEP2016-00029, Mr. McIlrath was provided with a copy of the document for review. By reviewing the content of the documents delivered to him on November 4, 2016 (i.e. incomplete Final SEPA DNS for SEP2016-00029), Mr. McIlrath was aware of several major deficiencies and violations of law. Foremost, Mr. McIlrath was aware of the planned violation of the State Growth Management Act by Yakima County and Yakima

County officials. On November 4, 2016, Mr. McIlrath knew that the October 2015 wetland report was incorporated by reference into the content of the incomplete Final SEPA DNS for SEP2016-00029. And Mr. McIlrath knew that the October 2015 wetland report was not part of the complete project file for SEP2016-00029 as of August 9, 2016. So Mr. McIlrath was aware, in advance, that Yakima County officials concealed the October 2015 wetland report during the SEPA process, disallowing commenting by members of the public.

Mr. McIlrath was aware, on November 4, 2016, that Yakima County officials were participating in a scheme to prevent enforcement of the Federal Clean Water Act by “slipping in” the October 2015 wetland report at the “last minute”, at the bitter end of the commenting period for the SEPA process. Mr. McIlrath was aware that the October 2015 wetland report affirmed the planned destruction of 58-jurisdictional wetlands which represent a significant adverse environmental impact on the environment. Mr. McIlrath was aware on November 4, 2016 that the significant adverse environmental impacts to wetlands disallowed the issuance of a Final SEPA DNS for the project (SEP2016-00029).

Mr. McIlrath was aware that Yakima County officials, along with Widener & Associates, unlawfully indicated that a man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse; Mr. McIlrath, as with other Yakima County officials, must utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway that includes the location of the jurisdictional Shaw Creek watercourse. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that the man-made ditch under unlawful use at the Bainter site of Shaw Creek is NOT the location of the jurisdictional Shaw Creek watercourse. Yet the content of the illegally-inserted October 2015 wetland report shows that the man-made ditch under unlawful use (Bainter) IS the location of the jurisdictional Shaw Creek watercourse. Yakima County (applicant/developer; planning officials; Mr. McIlrath) may not lawfully indicate that the ditch is the location of the jurisdictional watercourse due to the fact that regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm that the ditch is NOT the location of the jurisdictional Shaw Creek watercourse. On November 4, 2016, Mr. McIlrath was aware

that Yakima County was unlawfully inserting content of the October 2015 wetland report into the incomplete Final SEPA DNS for the project (SEP2016-00029).

On November 4, 2016, Mr. McIlrath reviewed the incomplete Final SEPA DNS for SEP2016-00029 and was aware that Yakima County officials were participating in a scheme to prevent enforcement of the Federal Clean Water Act. Mr. McIlrath knew that Yakima County officials inserted the October 2015 wetland report into the project files for SEP2016-00029 two months following the determination that the application materials were “complete” (August 9, 2016). Mr. McIlrath also knew that Yakima County (i.e. Mr. Jeff Legg; Mr. Cliff Bennett) participated in the environmental crimes of 2012 (Shaw Creek relocation; filling of jurisdictional wetlands; filling of the jurisdictional watercourse). Mr. McIlrath knew that Yakima County served as “agent” for the 2012 Shaw Creek project and Mr. McIlrath knew that the breach of Shaw Creek was performed under the direction of Mr. Legg (Yakima County). Mr. McIlrath knew that the relocation of Shaw Creek in 2012 was performed without issuance of a COE 404 Fill & Dredge permit. Mr. McIlrath knew that the jurisdictional Shaw Creek wetlands were filled in 2012 without issuance of a COE 404 Fill & Dredge permit. Mr. McIlrath knew that the jurisdictional Shaw Creek watercourse was unlawfully filled with excavation spoils without issuance of a COE 404 Fill & Dredge permit.

On November 4, 2016, Mr. McIlrath was aware of the “prescription scheme” that is used repeatedly by Yakima County officials to violate the Federal Clean Water Act. Furthermore, Mr. McIlrath was aware on November 4, 2016 that Mr. Jeff Legg (Yakima County) utilized the secretive, corrupt, and unlawful prescription scheme to plan and implement the Shaw Creek environmental crimes of 2012. Mr. McIlrath was aware that the prescription of 2012 created step-by-step directions to relocate Shaw Creek into a man-made ditch; in addition, directions were provided to place fill within the jurisdictional Shaw Creek watercourse. The prescription of 2012 demonstrated that Yakima County pre-planned the relocation of Shaw Creek. In sum, Yakima County planned and implemented violations of the Federal Clean Water Act involving Shaw Creek in 2012; this was known to Mr. McIlrath when he reviewed the incomplete Final SEPA DNS for SEP2016-00029 on November 4, 2016.

Mr. McIlrath was asked to review the content of the incomplete Final SEPA DNS for SEP2016-00029 on November 4, 2016 where Yakima County officials slipped-in the content of the October 2015 wetland report. The October 2015 wetland report unlawfully indicates that the man-made ditch under unlawful use (Bainter site) is the location of the jurisdictional watercourse; by introducing the document (October 2015 wetland report) into the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials were participating in the scheme to prevent enforcement of the Federal Clean Water Act. Yakima County officials preemptively destroyed Shaw Creek and preemptively destroyed the Shaw Creek environment in 2012; the preemptive environmental destruction involved well-documented violations of the Federal Clean Water Act. Mr. McIlrath knew that Yakima County officials are vigorously attempting to circumvent compliance with the Federal Clean Water Act by illegally asserting that the man-made ditch at the Bainter site is the location of the jurisdictional watercourse.

Nearly every month since December 2014, officials from Widener & Associates have received payments from Yakima County pertaining to the “Shaw Creek relocation project”. Ostensibly, Widener & Associates is receiving over \$50,000 from Yakima County to perform wetland studies and wetland mitigation plans for the Shaw Creek project. In addition, Widener & Associates is receiving separate payments from Mr. Greg Bainter. By receiving large sums of money, Widener & Associates officials (Mr. Ross Widener; Mr. Jason Cade; others) have identified the ordinary high water mark (OHWM) of the man-made ditch under unlawful use (Bainter site) as the OHWM of the jurisdictional watercourse. Mr. Ross Widener, Mr. Cade, and others are mandated to use the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse. The man-made ditch is located outside of the charted floodway and, in part, outside of the Shaw Creek FEMA 100-year Floodplain; according to FEMA, the man-made ditch under unlawful use is NOT the location of the jurisdictional Shaw Creek watercourse.

Regardless, Mr. McIlrath, Mr. Ross Widener, Mr. Jason Cade, Mr. Cliff Bennett, Mr. Byron Gumz, and others unlawfully indicate that the man-made ditch under unlawful use

is the location of the jurisdictional Shaw Creek watercourse. All of these individuals (McIlrath, Widener, Cade, Bennett, Gumz, others) must utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse. Yet all of these individuals (McIlrath, Widener, Cade, Bennett, Gumz, others) have participated in the scheme to prevent enforcement of the Federal Clean Water Act by unlawfully asserting that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse.

On November 4, 2016, Mr. Paul McIlrath was also aware of the Yakima County scheme to achieve wealth resulting from well-documented violations of the Federal Clean Water Act. Mr. Jeff Legg and Mr. Cliff Bennett were the two Yakima County officials working on the Shaw Creek flood control grant in 2012 when Yakima County knowingly planned and implemented Shaw Creek Clean Water Act violations at the Bainter site. Mr. Legg and Mr. Bennett received notice in 2011 that a \$2.7 million FEMA PDM grant would be issued to Yakima County if full-disclosure of adverse environmental impacts to Shaw Creek occurred during a NEPA process. In 2011, Yakima County began to create plans with Mr. Bainter for a Shaw Creek project. From November, 2011 through April, 2012 Yakima County created secretive plans to relocate Shaw Creek into a man-made ditch at the Bainter site. The Bainter project, starting excavations on April 30, 2012, also entailed the unlawful filling of the jurisdictional watercourse with excavation spoils and the unlawful filling of jurisdictional Shaw Creek wetlands.

Mr. Jeff Legg, Mr. Cliff Bennett, and Yakima County could use Mr. Greg Bainter (Bainter Group LLC) to perform preemptive environmental destruction of Shaw Creek and destruction of Shaw Creek critical areas. Specifically, Mr. Jeff Legg, Mr. Cliff Bennett, and Yakima County could preemptively destroy Shaw Creek wetlands prior to the NEPA process. During the pending NEPA process, Yakima County would inform FEMA that jurisdictional wetlands did not exist at the Bainter site of Shaw Creek. However, Yakima County officials (i.e. Mr. Cliff Bennett) would not truthfully inform FEMA during the NEPA process that Yakima County officials preemptively participated in the pre-planned destruction of Shaw Creek jurisdictional wetlands. In fact, Yakima County and Mr. Cliff Bennett concealed the entire October 2015 wetland report from

FEMA during the NEPA process. On November 4, 2016, Mr. Paul McIlrath was aware that Yakima County participated in Shaw Creek Clean Water Act violations that included the pre-planned, preemptive destruction of jurisdictional wetlands at the Bainter site of Shaw Creek. And Mr. Paul McIlrath was aware that Yakima County preemptively destroyed Shaw Creek wetlands prior to the NEPA-process that required full-disclosure of environmental impacts. Mr. Paul McIlrath was aware that Yakima County officials foolishly and unlawfully preemptively destroyed jurisdictional wetlands so that officials at FEMA would be duped into believing that no wetlands existed along Shaw Creek.

Mr. McIlrath was aware on November 4, 2016 that Yakima County officials (i.e. Mr. Cliff Bennett) submitted only the flawed and rejected January 2015 wetland report to FEMA during the NEPA process. Needless to say, Mr. Cliff Bennett and Yakima County did not truthfully inform FEMA that Shaw Creek jurisdictional wetlands were preemptively destroyed at the Bainter site of Shaw Creek. Mr. McIlrath was also aware on November 4, 2016 that the October 2015 wetland report was also flawed since significant portions of the project area were not studied. By reviewing the November 4, 2016 incomplete Final SEPA DNS for SEP2016-00029, Mr. McIlrath was aware of numerous violations of law by Yakima County officials including the following:

1. Yakima County officials were flagrantly violating the State Growth Management Act by concealing the content of the October 2015 wetland report from members of the public.
2. Yakima County officials were participating in a scheme to prevent enforcement of the Federal Clean Water Act by introducing, at the last minute, the October 2015 wetland report into the SEP2016-00029 project file – and – subsequently incorporating by reference the content of the October 2015 wetland report.
3. Yakima County officials were participating in a scheme to achieve wealth as a result of violations of the Federal Clean Water Act by introducing, at the last minute, the October 2015 wetland report into the SEP2016-00029 project file – and – subsequently incorporating by reference the content of the October 2015 wetland report.



When Mr. McIlrath received, for review, the incomplete Final SEPA DNS for SEP2016-00029 on November 4, 2016, Mr. McIlrath could readily understand the planned strategy of Yakima County to prevent members of the public from filing an appeal. The content of the incomplete Final SEPA DNS for SEP2016-00029 included an underlined statement that SEPA appeals were disallowed by members of the public. Yet Mr. McIlrath was aware that Yakima County had issued a legal notice on August 12, 2016 to members of the public affirming that a 14-day appeal window existed following issuance of the Final SEPA DNS for SEP2016-00029. On the other hand, on November 4, 2016, Mr. McIlrath could review materials affirming that Yakima County disallowed any administrative appeals of the Final SEPA DNS for SEP2016-00029. Yet, Mr. McIlrath and other Yakima County officials possess no legal authority to deny a judicial appeal within Superior Court. Regardless, Mr. McIlrath and Yakima County officials attempted to disallow members of the public from filing an appeal for SEP2016-00029.

When Mr. McIlrath received and reviewed the incomplete Final SEPA DNS for SEP2016-00029, Mr. McIlrath noted that the “appeal” portion of the document did not contain the required “date” and “location” information. State law requires the lead agency to inform members of the public about their right to appeal the issued Final SEPA DNS. Specifically, State law mandates that the appeal section of the incomplete Final SEPA DNS for SEP2016-00029 contains the last “date” to file and appeal and the court or “location” of where to file the appeal. Yakima County was mandated to inform members of the public, within the Final SEPA DNS (for SEP2016-00029), both “date” and “location” information. Yakima County issued the incomplete Final SEPA DNS for SEP2016-00029 without “date” and without “location” information; as such, the Final SEPA DNS for SEP2016-00029 was incomplete. In essence, Yakima County never issued a complete Final SEPA DNS for SEP2016-00029 due to the fact that “date” and “location” information was missing from the document. Mr. McIlrath was aware that the Final SEPA DNS for SEP2016-00029, presented to him for review on November 4, 2016, was incomplete.

Following the review of the incomplete Final SEPA DNS for SEP2016-00029, Mr. McIlrath and other officials were provided with an opportunity to introduce changes to the document. Email records affirm that Mr. Lynn Deitrick (Yakima County) did, in fact, introduce changes to the incomplete Final SEPA DNS for SEP2016-00029. However, no individual (i.e. Mr. McIlrath, Mr. Deitrick, others) provided feedback with respect to the absence of mandatory appeal information that was missing from the document (Final SEPA DNS for SEP2016-00029). No one indicated that “date” and “location” information, per State law, must be added to the content of the Final SEPA DNS for SEP2016-00029. While Mr. McIlrath possessed an opportunity to correct the errors within the Final SEPA DNS for SEP2016-00029, he did not make those corrections.

Following November 4, 2016, when Mr. McIlrath received and reviewed the Final SEPA DNS for SEP2016-00029, Yakima County officials continued with various schemes. Yakima County officials continued with the pre-planned scheme to violate the State Growth Management Act by issuing an incomplete Final SEPA DNS for SEP2016-00029 that incorporated by reference the content of the October 2015 wetland report. Yakima County officials continued with the pre-planned scheme to prevent enforcement of the Federal Clean Water Act by incorporating by reference the content of the October 2015 wetland report. Yakima County officials continued with the pre-planned scheme to achieve wealth as a result of well-documented violations of the Federal Clean Water Act by incorporating by reference the content of the October 2015 wetland report. And Yakima County officials continued with the scheme to prevent members of the public from filing an appeal following issuance of an incomplete Final SEPA DNS for SEP2016-00029.

Additional “schemes” or errors also culminated with the issuance of the incomplete Final SEPA DNS for SEP2016-00029. For example, the application materials for the project were not signed by any person. And no applicant/developer possesses the required ownership or control of real property within the project site; so the applicant/developer cannot perform the project. A LUPA injunction bars issuance of the SEPA authorization for this project (SEP2016-00029); ostensibly, Mr. McIlrath and Yakima County officials

demonstrated contempt for the rule of law by issuing the incomplete Final SEPA DNS for SEP2016-00029 that allows for development at the Bainter site of Shaw Creek. The LUPA injunction specifically bars issuance of a SEPA authorization impacting the Bainter site of Shaw Creek as proposed by Yakima County.

Mr. McIlrath was also aware of other “schemes” on November 4, 2016. Yakima County was secretly planning to dewater Wide Hollow Creek. Yakima County was secretly planning to divert the waters of Wide Hollow Creek into a roadside ditch. Yakima County was preparing to unlawfully destroy 760 trees along the course of Wide Hollow Creek. Yakima County was preparing to unlawfully disrupt the hyporheic zone of Shaw Creek. Yakima County was preparing to unlawfully discharge sewage, arsenic, and lead into the drinking water supply of Yakima. Yakima County was preparing to create unlawful Riparian Habitat Zones along Shaw Creek and along Wide Hollow Creek. Yakima County was preparing to destroy nearly the entire Shaw Creek FEMA 100-year Floodplain without lawful compensatory storage. Yakima County was preparing to destroy 58-jurisdictional wetlands while asserting that the environmental destruction was “not significant”. Mr. McIlrath was aware of these, and other, critical area violations and environmental crimes, planned by Yakima County.

Ostensibly, Mr. McIlrath provided material support to Yakima County officials who pre-planned violations of law when the incomplete Final SEPA DNS for SEP2016-00029 was issued (signed on November 16, 2016). Records strongly suggest that Mr. McIlrath supported Mr. Leita, who drafted a letter to Matthew Seaman with numerous legal citations (October 2016). Records affirm that Mr. McIlrath attended strategic meetings nearly six months prior to the SEPA process. Records affirm that Mr. McIlrath received and reviewed the incomplete Final SEPA DNS for SEP2016-00029; Mr. McIlrath also reviewed voluminous commenting materials submitted during the NEPA process. However, Mr. McIlrath did not correct glaring deficiencies within the Final SEPA DNS for SEP2016-00029. And Mr. McIlrath appeared to facilitate the scheme to prevent members of the public from filing an appeal following issuance of the incomplete Final SEPA DNS for SEP2016-00029.

Subsequently, Mr. McIlrath is continuing to participate in the scheme to prevent members of the public from filing an appeal. Specifically, Mr. McIlrath states that members of the public (i.e. Matthew Seaman) should have filed a LUPA appeal within Superior Court during a 14-day window following issuance of the Final SEPA DNS for SEP2016-00029. While Mr. McIlrath provides rather specific instructions in the year 2017, in the year 2016 the mandatory information was missing from the appeal section of the incomplete Final SEPA DNS for SEP2016-00029. The Final SEPA DNS for SEP2016-00029 contained an “appeal” section that did not contain the mandatory “date” and “location” information; Mr. McIlrath missed his opportunity to make changes to the incomplete Final SEPA DNS for SEP2016-00029 when he was asked to review the contents of the document on November 4, 2016.

In addition, Mr. McIlrath is legally incorrect when he states in the year 2017 that a LUPA appeal should be filed. Mr. McIlrath is well-informed about LUPA regulations as they apply to SEP2016-00029. In the present scenario, Yakima County processed an isolated SEPA application for a “project” without simultaneous processing of the critical area application. When Yakima County officials made the decision to perform an isolated review of the SEPA application, without simultaneous review of the critical area application, LUPA no longer applied. Without exception, LUPA appeals must involve a simultaneous review of the SEPA application and the critical area application. Mr. McIlrath knows that Yakima County officials performed only a review of an isolated SEPA application without a critical area application. So Mr. McIlrath knows that LUPA does not apply. In truth, Mr. McIlrath is continuing to participate in a scheme to prevent members of the public from filing an appeal for SEP2016-00029.

Selected facts regarding Mr. Paul McIlrath:

- **April 12, 2016 Email from Donald Gatchalian to Terry Keenhan, David Haws, Paul McIlrath, Lynn Deitrick, and Byron Gumz regarding the “Shaw and Wide Hollow Creeks Flood Control Project 04212016-1** On April 12, 2016, Mr. Gatchalian emailed several Yakima County officials to set up a meeting

to discuss the SEPA process since the NEPA is complete. The Yakima County officials are high-ranking officials involved with strategy. Three months after the meeting, the planning department started the SEPA process designed to result in a SEPA DNS for the project. During the pending SEPA process, Yakima County officials knowingly concealed the content of the October 2015 wetland studies from members of the public. In addition, Yakima County officials followed a strategy of processing an isolated SEPA application without a simultaneous review of a critical area application (for a “project” proposal). And Yakima County officials, including Mr. McIlrath, were aware that required land ownership or control of land within the project area was lacking; as such, Yakima County was submitting a SEPA application for land that was not under their control or ownership.

- **August 25, 2016 – Email from Byron Gumz to Mr. Cliff Bennett and to Mr. Paul McIlrath with the nine documents submitted by Matthew E. Seaman as public comments for SEP2016-00029. 08252016-1** On August 25, 2016 Mr. Byron Gumz (Yakima County) sent copies of nine documents (public comments) submitted by Matthew Seaman to Paul McIlrath (Yakima County legal services) and to Cliff Bennett (Yakima County Surface Water Division). The documents were the comments submitted by Matthew Seaman on August 24, 2016.

*Comment – Mr. Paul McIlrath (attorney; Yakima County) was informed on August 25, 2016 about the numerous environmental and legal issues involved with the planned issuance of a Final SEPA DNS for SEP2016-00029. Mr. McIlrath was informed that Yakima County officials must utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of Shaw Creek. As such, Mr. McIlrath was acutely aware that the use of the October 2015 wetland report to identify the OHWM of the man-made ditch as the location of the jurisdictional watercourse is unlawful. Wetland officials (Mr. Jason Cade) and Yakima County officials (Bennett, Gumz, Carroll, Deitrick, others) do not possess the legal authority to dispute the content of the regulatory*

*FEMA 100-year Floodplain maps.*

*Mr. McIlrath was aware that Seaman submitted extensive comments about the content of the January 2015 wetland report. And Mr. McIlrath was aware that Seaman had been deprived of his right to enter comments into the public record dealing with the content of the October 2015 wetland report.*

*Mr. McIlrath was provided with Seaman comments about the FONSI, Environmental Assessment, and Centennial grant. Mr. McIlrath was made aware that hyporheic zone disruption will allow for the unlawful discharge of fecal bacteria and other toxins into the drinking water supply for Yakima. And Mr. McIlrath was provided with information affirming that the responses within the SEPA checklist for the project were false and misleading.*

- **September 6, 2016 – Email from Donald Gatchalian to Paul McIlrath, Byron Gumz, Cliff Bennett, Terry Keenhan, Thomas Carroll, and David Haws regarding the Shaw Creek project 09062016-2** On September 6, 2016 – Mr. Donald Gatchalian drafted an email to other Yakima County officials regarding a “citizen letter”, likely the letter submitted by Seaman outlining numerous violations by Yakima County officials. Within the email, documentation is recorded that Paul (Paul McIlrath) recommended this meeting to discuss appropriate responses or course of action. David Haws was to attend the meeting. Paul McIlrath was aware of the content of materials submitted by Seaman.

*Subsequently the response by Yakima County was to move forward with an isolated SEPA processing without also processing a critical area application. In addition, Yakima County tasked Mr. Leita with the creation of a letter to be delivered to Seaman; given the high content of legal citations, the letter was likely the creation of Paul McIlrath. In addition, Yakima County officials proceeded with processing of the SEPA materials with only the January 2015 wetland report*

*contained within the “complete” file for SEP2016-00029. Mr. Gumz continued to conceal the October 2015 wetland report through the middle of November, 2016. In November, at the close of the commenting windows, the October 2015 wetland report was scanned into the planning department file for SEP2016-00029. Likely, Yakima County officials affirmed the plan to create a Final SEPA DNS and simultaneously informing members of the public that an appeal under SEPA would not be allowed by Yakima County.*

- **September 6, 2016** – On September 6, 2016, Mr. Byron Gumz sent an email to Mr. Cliff Bennett and addressed the concerns he has about comments that may impact “procedural requirements”.
- **September 8, 2016 – Shaw Creek Relocation Meeting** - On September 8, 2016 a meeting took place at Yakima County; this was a “Shaw Creek Relocation Meeting”. Ostensibly, Mr. McIlrath was present at the meeting.
- **October 6, 2016 – Email from Mike Leita to all Yakima County Commissioners and to Mr. Vern Redifer. 10062016-1** On October 6, 2016, Mr. Mike Leita (Yakima County Commissioner) sent an email to Rand Elliott, Kevin Bouchey and Vern Redifer. Mr. Leita indicated the following: “We can discuss tomorrow at Friday water meeting.” The planned discussion was to deal with the letter sent by Matthew Seaman on September 28, 2017. The September 28, 2017 letter informed the Yakima County Commissioners that Mr. Jeff Legg (FCZD) planned and implemented preemptive habitat destruction in advance of planned development.
- **October 6, 2016 – Email from Mr. Vern Redifer to Donald Gatchalian, Terry Keenhan, Lynn Deitrick, Byron Gumz. 10062016-2** On October 6, 2016, Mr. Vern Redifer sent an email to Gatchalin, Keenhan, Deitrick and Gumz (all are Yakima County officials). The text of the email was: “All, Here is a copy of the letter from Matthew Seaman regarding the SEPA determination for Shaw Creek

that I would like to discuss tomorrow morning.” The purpose of the meeting was to “Discuss Shaw Creek Relocation SEPA”. Separately, an email from Donald Gatchalian indicated that Paul McIlrath wanted the meeting held to discuss the appropriate response and course of action. The course of action taken following the meeting involved intentional violations of the Growth Management Act and intentional violations of SEPA rules. The course of action taken by Yakima County was to conceal the existence of the October 2015 wetland report during commenting windows, thus depriving members of the public from knowing about the planned destruction of 58 jurisdictional wetlands. The course of action taken by Yakima County was for Mr. Mike Leita to draft a letter to Matthew Seaman, indicating that the Yakima County Commissioners are in full support of the Final SEPA DNS. In addition, Mr. Leita communicated that Yakima County position that the LUPA injunction is irrelevant.

- **October 6, 2016 – Email from Mr. Vern Redifer to Donald Gatchalian, Terry Keenhan, Thomas Carroll, Byron Gumz. 10062016-3** On October 6, 2016, Mr. Redifer set up a meeting with core personnel involved with the SEPA DNS for SEP2016-00029. The purpose of the meeting was to create a response or direction for Yakima County after receiving adverse communication from Seaman.
- **October 7, 2016. Meeting with Mr. Redifer (Yakima County) and Mr. Leita. 10072016-1** On October 7, 2016, Mr. Leita (Chairman, Yakima County Commissioners) reportedly met with Mr. Redifer to discuss the letter from Seaman detailing violations of the Federal Clean Water Act. This meeting was scheduled for Friday October 7, 2016 from 8 AM to 9 AM. The meeting was in conference room 419. This also may have involved Mr. Rand Elliott and Mr. Kevin Bouchey. The discussions occurred at a water meeting.
- **October 7, 2016. Meeting with Mr. Redifer (Yakima County), Terry Keenhan, Byron Gumz, Thomas Carroll, and Mr. Gatchalian. 10072016-2**



Meeting with Redifer, Keenhan, Gumz, Carroll, Gatchalian. On October 7, 2017, Mr. Vern Redifer set up a meeting with Keenhan, Gumz, Carroll, and Gatchalian to discuss the letter submitted by Seaman on September 28, 2017. Yakima County officials had been informed about Clean Water Act violations involving Shaw Creek (Bainter; 2012)

- **October 24, 2016 Letter from Mike Leita to Matthew Seaman – 10242016-1**

Following several meetings to address the September 28, 2016 letter from Matthew Seaman, Mr. Mike Leita (Yakima County Commissioner) drafted a letter to Matthew Seaman. Within the letter, Mr. Leita stated that the LUPA injunction was irrelevant. Mr. Leita stated that the Yakima County Commissioners fully support issuance of the Final SEPA DNS.

On October 24, 2016, Mr. Mike Leita signed and delivered a letter to Dr. Matthew Seaman. Within the content of the letter, Mr. Leita included the following sentence: *“The Bainter LUPA case is not relevant to the current Shaw Creek relocation project or its SEPA review.”* According to Mr. Leita and Yakima County, the judicial ruling of Judge Hahn within Superior Court is “not relevant”. According to Mr. Leita, Yakima County officials may project authority into the jurisdiction of the City of Yakima, issue a SEPA authorization at the Bainter site of Shaw Creek, without concern for the LUPA injunction barring issuance of a SEPA authorization involving Shaw Creek (Bainter site).

- **November 4, 2016 Email from Byron Gumz to Paul McIlrath (copies to Lynn Deitrick and Thomas Carroll) requesting a review of the SEP2016-00029 Shaw Creek Flood Hazard Mitigation Project Final DNS. 11042016-1**

On November 4, 2016 Mr. Gumz delivered a copy of the Final DNS for SEP2016-00029 to Mr. McIlrath for his review before issuance. In addition, copies were delivered to Mr. Deitrick and Mr. Carroll for review and changes. The attachment was the document: “SEP2016-00029 Shaw Creek Flood Hazard

Mitigation Project Final DNS \_bjg.docx”. The email message was “Gentlement, Please review the Draft Final DNS and let me know of any ocrrections or additions. Thank you, Byron”

The attachment contained a cover letter to Cliff Bennett and Interested Agencies. Within the letter is the statement: “We have modified the Threshold Determination to reference an updated wetland investigation and delineation and determined that your proposal will not have a probable significant adverse impact on the environment.” This statement affirms that Yakima County officials flagrantly violated the State Growth Management Act by concealing the existence of the October 2015 wetland report, scanning this report into planning files after the close of commenting windows, and disallowing public comment (and disallowing public knowledge) pertaining to the October 2015 wetland report.

The Determination of Non-Significance states that project components are located within the City of Yakima’s jurisdiction and within Yakima County’s jurisdiction. However, within Yakima County planning department files, agency letters of agreement (i.e. City of Yakima jurisdiction agreement) are not included. Within the document is the statement: “Our agency will not require any additional mitigation measures under SEPA.” Ostensibly, lawful wetland mitigation in the form of one-to-one replacement of destroyed wetlands, will not occur as a result of the Determination of Non-Significance by Yakima County.

The Final SEPA DNS document includes item “7-F” (Wetland Investigation and Delineation Report. Shaw Creek Flood Mitigation Project. Yakima County, WA. (October 2015); this wetland report was concealed from the public and concealed from commenting agencies during commenting windows for SEP2016-00029. Yakima County officials performed a flagrant violation of the State Growth Management Act by concealing with October 2015 wetland report during commenting windows.

Item “7-F” (Wetland Investigation and Delineation Report. Shaw Creek Flood Mitigation Project. Yakima County, WA. (October 2015)) also reads as follows: “An updated wetland investigation and delineation that identified 58 palustrine forested and emergent wetlands, as well as delineated the ordinary high water mark of Shaw Creek and Wide Hollow Creek.” Members of the public and commenting agencies were only allowed to read the flawed content of the January 2015 wetland report while Yakima County officials concealed the October 2015 wetland report. The October 2015 wetland report affirms that Yakima County will destroy 58 jurisdictional wetlands and no member of the public could comment upon that fact. The October 2015 wetland report also unlawfully identified the ordinary high water mark of a man-made ditch under unlawful use as the location of the jurisdictional Shaw Creek watercourse.

The Final SEPA DNS includes item 8 called “Appeal Information”. The content of the appeal information provided by Yakima County, and reviewed by Mr. McIlrath, is as follows: “This Final DNS is issued under WAC 197-11-340(2). There is not further comment on it. State law prohibits appeals for permits that do not have an appeal option, consequently no administrative appeal is allowed (WAC 197-11-680(3)(v)). For information on the appeal processes, or on other issues relating to this proposal, contact Byron Gumz, Senior Project Planner, at (509) 574-2300.” Yakima County officials underlined the portion of the text as follows: State law prohibits appeals. In truth, judicial appeals are lawful. Yakima County officials were aggressively attempting to avert attempts by members of the public from issuing judicial appeals. The fact remains, Yakima County disallowed the customary administrative appeal process through the Hearing Examiner system of Yakima County.

Required information is missing from the document within “Appeal Information” (item 8). Yakima County officials did not list the date of expiration of the appeal window and Yakima County officials did not list the “location” (Superior Court) for filing a judicial appeal. As such, the Final SEPA DNS for SEP2016-00029

represents a violation of SEPA Rules requiring Yakima County officials to include “date” and “location” information.

*Comment: Mr. McIlrath had the opportunity to verify the content of the Final SEPA DNS including comments pertaining to the appeal rights of members of the public. After this review, the Final SEPA DNS did not include the required information pertaining to “date” and “location”. Specifically, the 21-day window to file an appeal was not included within the Final SEPA DNS. And Yakima County was required to indicate that an appeal should be filed within Superior Court (i.e. location). Ostensible, Mr. McIlrath did not advise his client to include the SEPA required information within the Final SEPA DNS. In addition, Mr. McIlrath was made aware in advance that Yakima County officials would be incorporating by reference the content of the concealed October 2015 wetland report; as such, Mr. McIlrath was aware in advance that Yakima County officials were in the process of violating the State Growth Management Act.*

- **November 4, 2016 Email from Byron Gumz to Paul McIlrath (Attorney; Corporate Counsel; Yakima County) with copies to Lynn Deitrick and Thomas Carroll 11042016-3** On November 4, 2016 Mr. Gumz sent a copy of the Shaw Creek Final SEPA DNS to McIlrath, Deitrick and Carroll. As such, Mr. McIlrath, Deitrick and Carroll were aware on November 4, 2016 that Yakima County was in the process of violating the State Growth Management Act by concealing the content of the October 2015 wetland report from members of the public. In addition, all of these officials were aware, in advance, that Yakima County was attempting to extinguish the appeal rights of members of the public. Specifically, Mr. Paul McIlrath was aware on November 4, 2016 that Yakima County was violating the GMA by concealing the October 2015 wetland report, disallowing members of the public from entering comments into the public record about the planned destruction of 58 jurisdictional wetlands. In addition, Mr. McIlrath was aware, in advance, that Yakima County was not lawfully informing members of the public about the right to submit a judicial appeal within Superior

Court during a 21-day appeal window.

The draft SEPA DNS is dated “November 7, 2016” although it was distributed to Mr. McIlrath and others on November 4, 2016. The cover letter states: “We have modified the Threshold Determination to reference an updated wetland investigation and delineation and determined that your proposal will not have a probable significant adverse impact on the environment.” In essence, Yakima County officials performed a last-minute “switch” where the content of the October 2015 wetland report replaced the content of the flawed and rejected January 2015 wetland report. During commenting windows for SEP2016-00029, members of the public were disallowed from reading the content of the October 2015 wetland report. By disallowing members of the public to place comments into the public record pertaining to the October 2015 wetland report, Yakima County officials performed a flagrant violation of the State Growth Management Act.

The October 2015 wetland report affirms that 58-jurisdictional wetlands will be destroyed as a result of SEP2016-00029. The planned destruction of 58 jurisdictional wetlands is a significant probable adverse environmental impact that requires lawful wetland mitigation. For Yakima County officials to state that they “determined that your proposal will not have a probable significant adverse impact on the environment” while also affirming that 58 jurisdictional wetlands will be destroyed demonstrates a flagrant disregard for environmental laws. Specifically, Yakima County officials must ensure that the destroyed wetlands are lawfully replaced in a one-to-one fashion. Furthermore, Ecology affirmed that the planned destruction of 58 wetlands is a significant adverse environmental impact requiring wetland mitigation by Yakima County.

The draft Final SEPA DNS includes item 7. F. “Wetland Investigation and Delineation Report. Shaw Creek Flood Mitigation Project. Yakima County, WA. (October 2015).” The text reads as follows: “An updated wetland investigation

and delineation that identified 58 palustrine forested and emergent wetlands, as well as delineated the ordinary high water mark of Shaw Creek and Wide Hollow Creek.” This statement within the Final SEPA DNS is false due to the fact that the wetland report of October 2015 did not identify the lawfully defined ordinary high water mark of Shaw Creek per regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Instead, the content of the October 2015 wetland report indicates that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse; this man-made ditch is not located within the charted FEMA floodway and is in part located outside of the charted Shaw Creek FEMA 100-year Floodplain.

Furthermore, the wetland report of October 2015 indicates that the entire length of the man-made ditch under unlawful use is a jurisdictional wetland under the protection of the Federal Clean Water Act. Yakima County asserts that there are “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas”; such a wetland delineation is nonsense. This wetland delineation is also unlawful due to the fact that a wetland delineation was performed on a ditch that does not possess wetlands that are regulated by the Federal Clean Water Act. And the ordinary high water mark of the man-made ditch is not the ordinary high water mark of the jurisdictional Shaw Creek watercourse. FEMA data, FEMA levels, and FEMA regulatory maps affirm that the man-made ditch is not the location of the jurisdictional watercourse.

Yakima County officials performed the last-minute switch of wetland reports in a flagrant violation of the Growth Management Act. Furthermore, Yakima County officials were making a secretive effort to introduce the statement that the ordinary high water mark of the ditch (Bainter site) has become the ordinary high water mark of the jurisdictional watercourse. Yakima County officials were ostensibly attempting to circumvent compliance with the Federal Clean Water Act following well-documented environmental crimes of 2012. In 2012, Mr. Jeff Legg (Yakima County; FCZD) and Mr. Greg Bainter (developer) secretly relocated the

waters of Shaw Creek into a man-made ditch in violation of the Federal Clean Water Act. Ostensibly, Yakima County officials (Gumz; Carroll; Deitrick; McIlrath) were making a serious effort to declare that the man-made ditch under unlawful use has become the location of the jurisdictional watercourse.

This scheme to declare the OHWM of the man-made ditch as the OHWM of the jurisdictional watercourse is a “scheme to prevent enforcement of the Federal Clean Water Act”. In 2012, Mr. Legg and Mr. Bainter did not possess a COE 404 Fill & Dredge permit when relocating the waters of Shaw Creek into a man-made ditch. Mr. Bainter is now named as a defendant in Clean Water Act litigation for the environmental crimes of 2012. Yakima County officials are now participating in a scheme to prevent enforcement of the Federal Clean Water Act by declaring that the man-made ditch at the Bainter site is the location of the jurisdictional watercourse.

As mentioned, the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps indicate that the man-made ditch is not the location of the jurisdictional watercourse. And Yakima County officials (Gumz, Carroll, Deitrick; McIlrath) do not possess the legal authority to declare that the man-made ditch is now the location of the jurisdictional Shaw Creek watercourse. In addition, within Federal District Court, a Federal judge is likely to mandate that Mr. Bainter restore the site of environmental crimes of 2012. As such, use of the man-made ditch as a jurisdictional watercourse is likely to be abated; specifically, the ditch is likely to be filled while the location of the jurisdictional watercourse restored. And forensic wetlands, currently under unlawful fill, will also be restored at the Bainter site. The scheme used by Yakima County officials involved a flagrant violation of the GMA in an effort to circumvent compliance with the Federal Clean Water Act following well-documented environmental crimes of 2012 at the Bainter site.

Within the draft Final SEPA DNS is item 8 called “Appeal Information”. The

content of this section reads as follows: “This Final DNS is issued under WAC 197-11-340(2). There is no further comment on it. State law prohibits SEPA appeals for permits that do not have an appeal option, consequently no administrative appeal is allowed (WAC 197-11-680(3)(v)). For information on the appeal processes, or on other issues relating to this proposal, contact Byron Gumz, Senior Project Planner, at (509) 574-2300.” Significant appeal information must be included within section 8 of the Final SEPA DNS; Yakima County officials did not provide mandated “date” and “location” information. Specifically, Yakima County officials were mandated to indicate that a 21-day appeal window existed during which a judicial appeal could be filed by a member of the public. In addition, the location to file the appeal was within “Superior Court”. Yakima County officials did not list the mandated “date” and “location information”.

Ostensibly, Yakima County officials underlined the text “State law prohibits SEPA appeals ...” Yakima County officials appeared to be attempting to extinguish the appeal rights of members of the public. While Yakima County officials denied members of the public of the SEPA right to submit an administrative appeal, Yakima County officials do not possess the legal authority to disallow a judicial appeal within Superior Court.

In advance, Mr. Paul McIlrath was provided with a copy of the draft Final SEPA DNS for SEP2016-00029. And Mr. McIlrath was made aware that Yakima County officials were not including the correct appeal information within section 8 of the Final SEPA DNS.

- **November 17, 2016 Letter from Matthew Seaman to Paul McIlrath with copies to James Adams and Byron Gumz dealing with SEP2016-00029 and a simultaneous SEPA and CAO/FP permit review. 11172016-1** On November 17, 2016, Matthew Seaman drafted a letter to Paul McIlrath; Yakima County had not yet delivered the Final SEPA DNS for SEP2016-00029. The letter is two



pages in length with legal citations.

- November 17, 2016 – On November 26, 2016, Matthew Seaman sent a letter to Paul McIlrath regarding citations of law. The content of the document is as follows:

To: Paul McIlrath

From: Matthew Seaman

Regarding: SEP2016-00029 (simultaneous SEPA and CAO/FP permit review)

Up to now, Yakima County has indicated that it will issue an isolated SEPA DNS without also creating a CAO/FP permit. SEPA Rules, a review by the Hearing Examiner, and a Court Ruling affirm that Yakima County must create a simultaneous SEPA DNS and CAO/FP permit allowing for one, single, open-record hearing that creates a formal legal record and testimony under oath.

From *Ellensburg Cement Products, Inc. v. Kittitas County*, 179Wn.2d 737 (2014):  
“Moreover, the government entity permitting the SEPA appeal “[s]hall consolidate an appeal of [SEPA] determinations ... with a hearing or appeal on the underlying governmental action by providing for a single simultaneous hearing.” RCW 43.21C.075(3)(b). Thus state law requires that if a local government opts to provide a SEPA appeal, that appeal must occur simultaneously with a hearing on the underlying action. Moreover, and importantly for this case, a SEPA appeal must “provide for the preparation of a record for use in any subsequent appeal proceedings,” and an “adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript.” RCW 43.21C.075(3)(c)

“RCW 36.70B.060 lays out the requirements for SEPA appeals if local governments choose to provide them. Under RCW 36.70B.060(6), “if a local government elects to provide an appeal of its threshold determinations or project permit decisions, the local government shall provide for *no more than one*

consolidated open record hearing on such appeal." (Emphasis added.)”

“Under SEPA, if a county provides an appeal from its SEPA determination, the county *must* "consolidate an appeal of [SEPA] determinations ... with a hearing or appeal on the underlying governmental action by providing for a *single simultaneous hearing*." RCW 43.21C.075(3)(b) (emphasis added).”

“Third, and most important for interpreting the statute at issue, RCW 43.21C.075(3)(c) states that an agency providing a SEPA appeal *must* "provide for the preparation of a record for use in any subsequent appeal proceedings, and shall provide for any subsequent appeal proceedings to be conducted on the record, consistent with other applicable law." Moreover, an "adequate record consists of findings and conclusions, testimony under oath, and taped or written transcript." *I d.* At a minimum, then, the consolidated hearing on the SEPA appeal and the underlying action must provide for introduction of testimony under oath.”

Apparently, Yakima County will proceed with issuance of an isolated SEPA DNS and "test" the legal waters. Likely, Yakima County will be compelled to create one, single, simultaneous appeal hearing for both the SEPA DNS and the CAO/FP permit. In Ellensburg, a single, combined, simultaneous appeal hearing was mandated. In the City of Yakima, a single, combined, simultaneous appeal hearing was mandated. Likely, in Yakima County a single, combined, simultaneous appeal hearing will be mandated. Besides, the Yakima Hearing Examiner has already created a thorough review of this precise legal issue.

You may also be interested in knowing additional facts. The SEPA Checklist for SEP2016-00029 relies upon environmental studies of a man-made ditch under unlawful use following Shaw Creek Clean Water Act violations in 2012. The man-made ditch is not Shaw Creek, is not a critical area, and does not possess "ditch Fish & Wildlife critical areas". And one project element of SEP2016-00029 was slated to be a dredging and excavation of the terminus of Shaw Creek; this project element was already completed in May-April, 2016 without issuance of any

permits (i.e. no COE 404 Fill & Dredge permit). Evidence also indicates hyporheic zone disruption with associated MTCA violations; Ecology has been notified to begin an investigation (CWA violation; MTCA violation).

You may wish to review the legal situation with Mr. Jim Adams (attorney).

- **November 17, 2016** – On November 17, 2016 Matthew Seaman sent an email to Mr. McIlrath at Yakima County containing the following content:

November 17, 2016 10 AM

Dear Paul McIlrath,

Thank you for the email that you sent this morning. Your client, Mr. Byron Gumz (Yakima County) has provided you with copies of documents and evidence related to Shaw Creek Clean Water Act violations that were directed by Mr. Jeff Legg (Yakima County) and other documents dealing with SEP2016-00029. Given the legal issues involved with court cases and hearings, I thought that your client and you would be interested in some of the legal evidence impacting SEP2016-00029.

In addition, your client (Mr. Gumz) may wish to discuss with you some of the legal problems that result from performing Shaw Creek Clean Water Act violations, performing environmental studies of a man-made ditch under unlawful use (and studying "man-made ditch Fish & Wildlife critical areas"), then performing a second relocation of Shaw Creek without gaining compliance with the Clean Water Act following the first (unlawful) relocation of Shaw Creek.

Plus, your client (Mr. Gumz) might wish to discuss the reported Shaw Creek CWA violation of April-May, 2016 and the associated MTCA violation that has been reported to Ecology.

Should you or your client (Mr. Gumz; Yakima County Planning) wish to review some of the legal issues and hard evidence, please make contact with Mr. Jim Adams (attorney)

Sincerely,

Matthew Seaman

- **November 22, 2016 McIlrath and Byron Gumz meeting 11222016-1** On November 22, 2016 Mr. Paul McIlrath (attorney) and Mr. Byron Gumz (Planning – Yakima County) met. This fact is affirmed by an email of November 23, 2016. During the meeting they spoke of document request 429 where Yakima County records are to be lawfully released to members of the public (Seaman).

*Comment – Mr. McIlrath is involved with the review and possibly the limitation of released information by Yakima County officials to Seaman.*

- **November 22, 2016 Seaman to Lynn Deitrick email with attachment (Withdraw the Final SEPA DNS for SEP2016-00029) 11222016-2** On November 22, 2016 Dr. Matthew E. Seaman sent an email to Lynn Deitrick (Yakima County Planning) stating that Yakima County is mandated to withdraw the Final SEPA DNS for SEP2016-00029. The attached document was titled “Submission to Yakima County regarding SEP2016-00029” with the date of November 23, 2016. Within the attached document, WAC 197-11-340 (3) (a) (i, ii, iii) was cited. The basis for reversing the SEPA DNS is as follows: 1) The proposal has substantially changed (destruction of 58 wetlands; relocation of Wide Hollow Creek) 2) New information on adverse environmental impacts is known (58 jurisdictional wetlands will be destroyed) 3) The DNS was procured by misrepresentation or lack of material disclosure (concealment of the October

2015 wetland report; concealment of the plan to relocate Wide Hollow Creek).

- **November 23, 2016 Email from Byron Gumz to Stormy Miller and Paul McIlrath (with copy to Lynn Deitrick) 11232016-1** On November 23, 2016 Mr. Byron Gumz created an email affirming that he and McIlrath discussed the document request 429 in the office of Mr. McIlrath; that meeting was November 22, 2016. Mr. Gumz stated "... I believe that questions that needed a response from me were answered".
- **November 23, 2016 Email from Stormy Miller to Byron Gumz and Paul McIlrath regarding public record request 429 11232016-3** On November 23, 2016 Stormy Miller sent an email to Gumz and McIlrath indicating that she will get with Paul McIlrath to obtain responses to be submitted for the public record request 429 (to Seaman).

*Comments – Documents released by Yakima County are filtered by McIlrath before release by Stormy Miller. So Mr. McIlrath appears to control the release of documents and appears to control the responses provided by Mr. Gumz.*

- **December 19, 2016 Email from Dinah Reed to Matthew Seaman with copies to Jason Earles, Lynn Deitrick, Byron Gunz, Thomas Carroll, and Paul McIlrath 12192016-1** On December 19, 2016, Dinah Reed emailed a host of individuals regarding the issue of "Certified Floodplain Manager" for Yakima County. Dinah Reed stated that she was not assigned to or involved with the Shaw Creek case.

*Comment: Dinah Reed informed all of the principal parties involved with SEP2016-00029 regarding communications involved with the issue of the Yakima County Certified Floodplain Manager who should be watching the development of the Shaw Creek FEMA 100-year Floodplain. With SEP2016-00029, the entire FEMA floodplain will be destroyed without lawful compensatory storage. Yet no*

*credible floodplain manager is watching this development and no floodplain manager is involved with the Shaw Creek development project.*

- **December 22, 2016 Email from Mr. Byron Gumz to Mr. Paul McIlrath (with copies to Lynn Dietrick and Thomas Carroll) regarding fill material within Shaw Creek/Wide Hollow Creek floodways. 12222016-2** On December 22, 2016, Mr. Byron Gumz contacted McIlrath, Deitrick and Carroll asking “How should I respond? This is likely Mr. Seaman submitting complaints to the city.”

*Comment: No additional communications have been provided. So emails from Carroll, Deitrick, or McIlrath may have been deleted. The advice received by Gumz is unknown. The materials provided to the City of Yakima (Mr. Calhoun) are not known. Mr. McIlrath was involved with the micromanagement of Mr. Byron Gumz, a planning officials who would take not action without a legal consultation from Mr. McIlrath. Mr. McIlrath is involved with “command and control” of individuals within the Yakima County planning department.*

**Mr. Mike Leita – Yakima County**

Mr. Mike Leita is the Yakima County commissioner who directs the Shaw Creek relocation project involving \$2.7 million in Federal grant funding. On October 2016, On October 27, 2016, Mr. Leita issued an email to other Yakima County commissioners, notifying the commissioners the Mr. Leita would discuss the legal problems with SEP2016-00029 during an upcoming meeting. Following the commissioner meeting, Mr. Leita drafted a letter to Matthew Seaman regarding SEP2016-00029. Mr. Leita indicated that the Yakima County commissioners supported SEP2016-00029. Several legal citations were included with the letter, strongly suggesting that the letter was created by Mr. Paul McIlrath and then signed by Mr. Leita.

Mr. Leita stated that he fully supported SEP2016-00029. As such, Mr. Leita affirmed his support for the following:

1. Yakima County officials could preemptively destroy Shaw Creek in 2012, destroying the environment prior to fully-disclosing the adverse environmental impacts of the project prior to the NEPA process.
2. Yakima County officials could pre-plan and implement violations of the Federal Clean Water Act by: A) relocation of Shaw Creek into a man-made ditch (2012) without a COE 404 Fill & Dredge permit B) use of excavation spoils to fill the jurisdictional watercourse of Shaw Creek without a COE 404 Fill & Dredge permit C) unlawful filling of jurisdictional Shaw Creek wetlands without issuance of a COE 404 Fill & Dredge permit (2012).
3. Yakima County could relocate Shaw Creek into a man-made ditch, increasing the flood-risk to the adjacent community, and Yakima County need not comply with Federal law by performing mandatory legal notification to FEMA, to Ecology, and to the adjacent community.
4. Yakima County could participate in the NFIP without complying with NFIP regulations.

5. Yakima County could conceal the content of the October 2015 wetland report during the NEPA process, duping FEMA officials into believing that the only report is the January 2015 wetland report that was rejected by the USACE (winter wetland studies are not valid).
6. Yakima County could conceal the content of the October 2015 wetland report during the SEPA process, disallowing members of the public from knowing about the planned destruction of 58-jurisdictional wetlands by Yakima County.
7. Yakima County, as applicant/developer could note that conditions on the ground differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps, yet the applicant/developer (Yakima County) need not make lawful revisions to the regulatory FEMA maps.
8. Yakima County, as applicant/developer, need not perform wetland studies in large portions of the project area.
9. Yakima County need not own land within the project area and need not control land within the project area for SEP2016-00029.
10. Yakima County officials need not sign the application materials for SEP2016-00029.
11. Yakima County officials could ignore NFIP regulations barring hyporheic zone disruption as proposed by Yakima County.
12. Yakima County officials could propose insufficient Riparian Habitat Zones along Shaw Creek and along Wide Hollow Creek.
13. Yakima County officials could violate FIFRA by using imazapyr to poison 760 trees along Wide Hollow Creek.
14. Yakima County officials could violate Federal law by destroying all trees along Wide Hollow Creek in the project area.
15. Yakima County officials could violate law by destroying wetlands without lawful one-to-one replacement.
16. Yakima County officials need not truthfully identify floodways within the project area.



17. Yakima County officials need not utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted floodway and identify the location of the jurisdictional Shaw Creek watercourse.
18. Yakima County officials could possess a secret project element to excavate a retention pond to completely dewater Wide Hollow Creek.
19. Yakima County officials could possess a secret project element to relocate Wide Hollow Creek into an insufficient roadside ditch.
20. Yakima County officials could knowingly violate the State Growth Management Act when issuing a SEPA authorization for the project.
21. Yakima County officials could knowingly participate in a scheme to prevent enforcement of the Federal Clean Water Act with issuing a SEPA authorization for the project.
22. Yakima County officials could knowingly participate in a scheme to achieve wealth resulting from well-documented violations of the Federal Clean Water Act.
23. Yakima County officials could participate in a scheme to prevent members of the public from filing an appeal for the SEPA authorization for SEP2016-00029.
24. Yakima County officials could project authority into the City of Yakima, and consider themselves immune from the LUPA injunction barring issuance of a SEPA authorization involving the Bainter site of Shaw Creek.
25. Yakima County officials could unlawfully indicate that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse despite being located outside of the charted floodway.
26. Yakima County officials could unlawfully indicate that a man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse despite being located outside of the charted Shaw Creek FEMA 100-year floodplain.
27. Yakima County officials could unlawfully indicate that a man-made ditch under unlawful use is the location of jurisdictional Shaw Creek wetlands despite the fact that the man-made ditch is not a critical area.
28. Yakima County officials could unlawfully indicate that a man-made ditch under unlawful use is the location of jurisdictional Shaw Creek wetlands that are, per Mr. Leita and other Yakima County officials, “man-made-ditch-under-unlawful-use-

jurisdictional-wetland-critical-areas-under-the-protection-of-the-Federal-Clean-Water-Act”. Such a statement is nonsense. The ditch is not a critical area and does not possess jurisdictional wetlands.

Mr. Leita conducted crisis meetings in October of 2016 to work out a strategy to defeat pending appeals following issuance of a SEPA authorization for SEP2016-00029. Mr. Leita and other Yakima County officials created an unlawful strategy designed to circumvent local administrative appeals. And the strategy involved performing a flagrant violation of the State Growth Management Act. In addition, Mr. Leita and other officials arrived at a strategy to participate in a scheme to prevent enforcement of the Federal Clean Water Act. At the same time, the strategy created by Mr. Leita and others was to participate in a scheme to achieve wealth resulting from violations of the Federal Clean Water Act.

Mr. Leita and other Yakima County officials affirm the use of the prescription scheme that is used to repeatedly plan and implement violations of the Federal Clean Water Act. This unlawful and corrupt prescription scheme was used by Mr. Jeff Legg, Yakima County, Mr. Bartand, WDFW, and Mr. Bainter to plan and implement the Shaw Creek Clean Water Act violations. Mr. Cliff Bennett received an unlawful prescription to dredge Wide Hollow Creek in 2016. Mr. Leita affirms the use of the corrupt and secretive prescription scheme by Yakima County officials.

Mr. Leita was clearly entangled with the SEPA process for SEP2016-00029 in October of 2016, where Yakima County officials had implemented pre-planned violations of the Federal Clean Water Act including the relocation of Shaw Creek into a man-made ditch. Mr. Leita and other Yakima County officials did not comply with Federal law by performing the mandatory legal notification to FEMA, to Ecology, and to the adjacent community when the jurisdictional Shaw Creek watercourse was relocated into a ditch. So the adjacent community was placed at increased risk of flooding while being deprived of the legal right to be informed that Shaw Creek had been relocated into a ditch possessing insufficient conveyance capacity. Rather than complying with the rule of law,

Mr. Leita and Yakima County officials ignored Federal law (NFIP) mandating formal legal notification to the adjacent community.

On February 21, 2017, the conveyance capacity of the man-made ditch under unlawful use was exceeded during early season runoff. Overbank flooding from the man-made ditch at the Bainter site resulted in the flooding of the Cottonwood Grove subdivision located to the southeast of the ditch (Bainter site). Homes and streets were flooded. The emergency flood-fight involved large crews from Yakima County and from the City of Yakima. Emergency excavations occurred and sandbagging occurred along the man-made ditch under unlawful use. In essence, Yakima County caused the flooding of the adjacent community and never provided the mandatory legal notification to the homeowners who were flooded. Needless to say, Yakima County is a PLP (potentially liable party) with respect to flood-costs incurred by homeowners within the adjacent community. Yet Mr. Leita fully supports Yakima County projects involving Shaw Creek including the pre-planned Clean Water Act violations of 2012.

Mr. Leita and Yakima County are considered “applicant/developers” who have submitted SEPA application materials to the planning department for approval. Within the SEPA application materials, Mr. Leita and other Yakima County officials indicate that hyporheic zone disruption of Shaw Creek will occur; the proposed hyporheic zone disruption of Shaw Creek is a planned violation of Federal law. Federal law (NFIP) bars hyporheic zone disruption as proposed by Yakima County due to the fact that this adverse environmental impact cannot be mitigated by the applicant/developer. Yet Mr. Leita fully supports the hyporheic zone disruption of Shaw Creek that will cause the discharge of sewage into the drinking water supply of Yakima. In addition, the surface waters of Shaw Creek contain lead and arsenic; these additional toxins will be discharged into the drinking water supply by Yakima County. And Mr. Leita “fully supports” the project plan to poison the water supply of Yakima by discharging sewage (fecal bacteria), arsenic, and lead into the aquifer used as the source of drinking water for Yakima..

Mr. Leita and Yakima County officials appear to be “double-dipping” within two different grants. Within the FEMA PDM grant, precisely \$351,000 was earmarked to pay

for the groundwater ditch (i.e. relocation channel of Shaw Creek). Within the Centennial grant, precisely \$351,000 was earmarked to pay for the groundwater ditch (i.e. relocation channel of Shaw Creek). Yakima County now states that the Centennial grant is simply a complementary grant, being used to improve water quality. However, Yakima County has failed to explain how precisely \$351,000 is required within two separate grants for the same project element.

In addition, Mr. Leita and Yakima County officials will use the \$351,000 (times two) to unlawfully dewater Wide Hollow Creek. One or both of the earmarked amounts of \$351,000 will be used to construct a retention pond, unlawfully excavating through the hyporheic zone of Shaw Creek; the hyporheic disruption represents an NFIP violation. The secretive dewatering of Wide Hollow Creek by means of the retention pond is another pre-planned violation of the Federal Clean Water Act.

State of Washington law bars the use of Centennial funds on a flood control project. Mr. Leita and Yakima County officials unlawfully will be using the Centennial funds on the Shaw Creek flood control project. No improvement in water quality will result. No portion of the project will reduce fecal bacteria within Shaw Creek. And Mr. Leita proposes to destroy trees along both Wide Hollow Creek and along Shaw Creek; as a result, water will be unnaturally warmed which is another adverse impact or impairment to water quality. Water quality will decline as a result of the project.

Mr. Leita and other Yakima County officials appear to have been informed by the USACE that another large grant of \$10-\$13 million will be given to Yakima County to perform additional flood control work on the Yakima River. However, Yakima County is an NFIP community that does not comply with NFIP regulations. By repeatedly violating NFIP regulations, Yakima County faces sanctions from FEMA; these sanctions may disallow Yakima County from receiving Federal grants. So Yakima County may end up losing the \$10-\$13 million grant from the USACE.

When considering the numerous NFIP violations by Yakima County, Mr. Leita and other Yakima County officials face a daunting task to make remedies in the “workings” of Yakima County. Examples of Yakima County NFIP violations are as follows:

- In 2012, the jurisdictional Shaw Creek watercourse was relocated into a man-made ditch without issuance of lawful permits; the failure to obtain lawful permits was a well-documented violation of the Federal Clean Water Act and a violation of Federal law (NFIP – NFIP regulations mandate that permits are issued for projects within regulated FEMA floodplains).
- In 2012, the jurisdictional Shaw Creek watercourse was unlawfully filled with excavation spoils without issuance of lawful permits; the failure to obtain lawful permits was a well-documented violation of the Federal Clean Water Act and a violation of Federal law (NFIP – NFIP regulations mandate that permits are issued for projects within regulated FEMA floodplains).
- In 2012, jurisdictional Shaw Creek wetlands were unlawfully filled with excavation spoils without issuance of lawful permits; the failure to obtain lawful permits was a well-documented violation of the Federal Clean Water Act and a violation of Federal law (NFIP – NFIP regulations mandate that permits are issued for projects within regulated FEMA floodplains).
- In 2012, the jurisdictional Shaw Creek watercourse was relocated into a man-made ditch (Bainter site); NFIP regulations mandate legal notification to Ecology, to FEMA, and to the adjacent community. Yakima County did not provide the mandatory legal notification in compliance with NFIP regulations (Federal law).
- In 2014 and 2015, Yakima County unlawfully dredged Wide Hollow Creek at S. 96<sup>th</sup> Avenue without issuance of the required COE 404 Fill & Dredge permit; the failure to obtain lawful permits was a well-documented violation of the Federal Clean Water Act and a violation of Federal law (NFIP – NFIP regulations mandate that permits are issued for projects within regulated FEMA floodplains).
- In 2014 and 2015, Yakima County unlawfully excavated new finger channels, spreading the Wide Hollow Creek watercourse at S. 96<sup>th</sup> Avenue without issuance

- of the required COE 404 Fill & Dredge permit; the failure to obtain lawful permits was a well-documented violation of the Federal Clean Water Act and a violation of Federal law (NFIP – NFIP regulations mandate that permits are issued for projects within regulated FEMA floodplains).
- In 2014 and 2015, Yakima County unlawfully destroyed 100% of the mature trees along the Wide Hollow Creek watercourse at S. 96<sup>th</sup> Avenue in violation of NFIP regulations; NFIP regulations allow only for removal of 35% of trees along a watercourse.

In sum, Yakima County repeatedly violated NFIP regulations. As an NFIP community that fails to enforce NFIP regulations, Yakima County is at risk of sanctions issued by FEMA. Sanctions may disallow Yakima County from accessing Federal grants until such time as Yakima County can demonstrate compliance with NFIP regulations.

Several individuals at Yakima County have been closely involved with the issuance of unlawful prescriptions. Mr. Eric Bartrand at the WDFW issues prescriptions to Yakima County officials who plan and implement violations of the Federal Clean Water Act. The Environmental Protection Agency is now engaging in an investigation of the unlawful, corrupt, and secretive prescription scheme involving the WDFW and Yakima County. For example, in 2012, Mr. Jeff Legg and Yakima County served as “agent” when Shaw Creek was relocated into a man-made ditch (Bainter site). Mr. Jeff Legg (Yakima County) secretly obtained an unlawful prescription from Mr. Bartrand (WDFW) that was used to violate the Federal Clean Water Act. In 2014-5, Ms. Jeanna Paluzzi (Yakima County) obtained a prescription from Mr. Bartrand (WDFW) to unlawfully dredge Wide Hollow Creek and to unlawfully excavated finger channels. In 2016, Mr. Cliff Bennett obtained another unlawful prescription from Mr. Bartrand; this prescription was used to dredge Wide Hollow Creek between S. 80<sup>th</sup> Ave. and S. 96<sup>th</sup> Avenue. The repeated use of the prescription scheme by Yakima County to violate the Federal Clean Water Act is under investigation by the EPA. While Mr. Leita “fully supports” Yakima County officials who use the prescription scheme to violate the Clean Water Act, significant fines are mandated to those who knowingly violate the law.

**Ms. Catherine Reed – Ecology**

Ms. Catherine Reed is a wetland specialist who works in the Central Region Office of Ecology in Yakima. She has made numerous visits to the Shaw Creek site of Clean Water Act violations. Despite numerous site visits to inspect vegetation and wetlands, Ms. Catherine Reed has never affirmed that Shaw Creek was unlawfully relocated into a man-made ditch in 2012. She has created a number of discordant reports pertaining to Shaw Creek wetlands. At first, she indicated that a single wetland (Fulcrum wetland) existed at the Bainter site and specifically affirmed that no other wetlands existed at the Bainter site of Shaw Creek. Subsequently she changed her opinion, affirming the existence of “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas”; such an opinion is nonsense. The man-made ditch under unlawful use at the Bainter site of Shaw Creek is not a critical area and the ditch does not possess wetland critical areas. Regardless, Ms. Catherine Reed unlawfully affirmed the existence of these so-called “ditch wetlands”. In fact, according to Ms. Catherine Reed, the entire course of the man-made ditch was a jurisdictional wetland.

Subsequent to the “nonsense ditch wetland” determination by Ms. Catherine Reed, she affirmed that jurisdictional wetlands were under tons of excavation spoils at the site. Specifically, Ms. Catherine Reed affirmed the findings of the Widener & Associates wetland report of July 2016 where forensic wetlands, buried under unlawful fill, were identified at the Bainter site. While Catherine Reed ignored the forensic wetlands in 2013, 2014, and 2015, finally in 2016 she affirmed that jurisdictional wetlands had been filled at the Bainter site of Shaw Creek. Even in 2016, Ms. Catherine Reed (Ecology) failed to acknowledge that Shaw Creek had been unlawfully filled at the Bainter site, in violation of the Federal Clean Water Act.

In 2016, Ms. Catherine Reed (Ecology) was participating in a scheme to reverse the LUPA injunction imposed upon the City of Yakima, barring issuance of a Shaw Creek SEPA authorization and barring issuance of a Shaw Creek critical area permit. Ms. Catherine Reed had agreed to perform yet another Shaw Creek site visit with Mr. Eric

Bartrand (WDFW). Of note, Mr. Bartrand was the WDFW individual who actually planned and prescribed the Clean Water Act violations at the Bainter site in 2012; this fact is known to Ms. Catherine Reed (Ecology). According to the scheme or plans of 2016, both Mr. Bartrand and Ms. Reed would visit the Bainter site and create affirming reports in support of Mr. Greg Bainter (Bainter Group LLC). Based upon these affirming letters or reports, the City of Yakima would return to Superior Court to reverse the LUPA injunction.

Ms. Catherine Reed and Ecology possessed significant conflicts of interest when assessing the Bainter site in 2016. Ecology has largely been responsible for funding the Yakima County flood control project. Ecology funded the Shaw Creek floodplain re-study leading to FEMA 100-year floodplain maps; when the Shaw Creek FEMA 100-year Floodplain was mapped, FEMA awarded \$2.7 million to Yakima County. Ecology then awarded a Centennial grant to Yakima County valued at \$498,000. And Ecology awarded a Floodplain by Design grant of \$200,000 for the same flood control project. By repeatedly funding the flood control project, Ecology is significantly biased in favor of Shaw Creek development. So Ecology officials are not inclined to lawfully identify environmental crimes such as the unlawful relocation of Shaw Creek into a man-made ditch. And Ecology officials, such as Ms. Catherine Reed, might also choose to ignore the fact that jurisdictional wetlands were unlawfully filled along Shaw Creek.

In 2016, Mr. Eric Bartrand and Ms. Catherine Reed did perform a joint site visit. Mr. Eric Bartrand did create a glowing report for Mr. Bainter, affirming the work by Bainter to plant whips along the course of the man-made ditch under unlawful use. Needless to say, Mr. Eric Bartrand (WDFW) did not truthfully indicate that Mr. Bainter had performed well-documented violations of the Federal Clean Water Act in 2012. Ms. Catherine Reed continued to ignore the fact that Shaw Creek Clean Water Act violations occurred in 2012. However, Ms. Catherine Reed did express concern in emails that wetland areas might exist under unlawful fill at the site. So Ms. Catherine Reed and Ecology forced Mr. Bainter to obtain a wetland specialist to assess the site for forensic wetlands that were destroyed in 2012.



In July 2016, Widener & Associates performed another wetland study of the Bainter site. Perhaps as many as 14 differing wetland studies and assessments have been made of the site. Prior to July of 2016, Widener & Associates had never truthfully affirmed that jurisdictional wetlands were preemptively filled and destroyed at the Bainter site of Shaw Creek. However, the July 2016 wetland study (also called a critical area study) by Widener & Associates indicated that forensic wetlands existed at the Bainter site of Shaw Creek. As such, Widener & Associates affirmed that Clean Water Act violations of 2012 caused the destruction (filling) of jurisdictional wetlands.

Abundant evidence affirms that Mr. Eric Bartrand (WDFW), Mr. Jeff Legg (Yakima County), and Mr. Greg Bainter (Bainter Group LLC) utilized the corrupt, secretive, and unlawful prescription scheme to pre-plan and implement the Shaw Creek Clean Water Act violations of 2012; this fact is known to Ms. Catherine Reed (Ecology). And Ms. Catherine Reed knows that the preemptive destruction of jurisdictional wetlands along Shaw Creek facilitated the flood control plans of Yakima County. Ms. Catherine Reed knows that Yakima County submitted a flawed wetland report (January 2015) to FEMA, demonstrating that no wetlands existed along Shaw Creek at the Bainter site; the reason that Yakima County failed to identify wetlands was due to the fact that the wetlands had been preemptively destroyed shortly before the wetland studies required by FEMA. Again, Ms. Catherine Reed and Ecology are fully informed about the pre-planned and preemptive destruction of Shaw Creek and the pre-planned and preemptive destruction of jurisdictional Shaw Creek wetland areas.

***Facts (as they relate to Ms. Catherine Reed and Ecology:***

1. **Prior to 2000** – Yakima County and the City of Yakima pass ordinances to participate in the NFIP (National Flood Insurance Program). As NFIP communities, Yakima County and the City of Yakima allow for the provision of Federal subsidized flood insurance for homes located within FEMA floodplains. Ms. Catherine Reed and Ecology are aware that both Yakima County and the City of Yakima are NFIP communities that are mandated to comply with NFIP

regulations.

2. **Prior to 2000** – As NFIP communities, Yakima County and the City of Yakima agree to pass and enforce floodplain ordinances that protect critical area features within regulated FEMA floodplains in accordance with minimal Federal standards. Abundant evidence affirms that Yakima County and the City of Yakima do not enforce the protection of critical area features within regulated FEMA floodplains in accordance with minimal Federal standards. Ms. Catherine Reed and Ecology are aware that both Yakima County and the City of Yakima are NFIP communities that must pass and enforce floodplain ordinances that are consistent with minimal Federal standards.
  
3. **Prior to 2000** – As NFIP communities, officials at Yakima County and at the City of Yakima are mandated to utilize the regulatory and controlling FEMA 100-year Floodplain maps to identify the location of charted floodways and identify the location of jurisdictional watercourses within the charted floodways. Abundant evidence affirms that officials at Yakima County and at the City of Yakima do not utilize the regulatory and controlling FEMA 100-year Floodplain maps to identify the location of charted floodways and identify the location of jurisdictional watercourses within the charted floodways. To the contrary, based upon unlawful discretion of Yakima County officials and City of Yakima officials, the location of jurisdictional watercourses is not in agreement with the regulatory and controlling FEMA 100-year Floodplain maps. Ms. Catherine Reed and Ecology are aware that both Yakima County and the City of Yakima are NFIP communities.
  
4. **Prior to 2000** – As NFIP communities, officials at Yakima County and at the City of Yakima are mandated to ensure that permits are issued for projects within regulated FEMA floodplains. Yakima County and the City of Yakima violate NFIP regulations by allowing projects within regulated FEMA floodplains without issuance of lawful permits. For example, Yakima County participated in

the relocation of Shaw Creek into a ditch in 2012 without issuance of lawful permits. Ms. Catherine Reed and Ecology are aware that both Yakima County and the City of Yakima are NFIP communities, performing development projects within regulated FEMA floodplains without issuance of lawful permits.

5. **Prior to 2000** – As NFIP communities, officials at Yakima County and at the City of Yakima are mandated to comply with additional NFIP regulations including the following:
- Wetlands must be replaced in a one-to-one fashion when wetlands are destroyed as a result of a development project. Note that Yakima County preemptively destroyed Shaw Creek wetlands prior to the NEPA process for the FEMA PDM grant so that one-to-one wetland replacement would not be required. So, Yakima County blatantly violated Federal law (NFIP regulations); in addition, the wetland destruction was a well-documented violation of the Federal Clean Water Act (Bainter site, 2012). Ms. Catherine Reed is aware that Yakima County pre-planned the preemptive destruction of Shaw Creek jurisdictional wetlands.
  - Compensatory storage of floodplains must occur. Note that the Shaw Creek flood project proposed by Yakima County entails the destruction of the majority of the Shaw Creek FEMA 100-year Floodplain without lawful compensatory storage. Ms. Catherine Reed is aware of Yakima County plans to destroy nearly the entire Shaw Creek FEMA 100-year floodplain without lawful compensatory storage.
  - Development within a regulated floodplain may destroy, at most, 35% of the vegetation. Note that Yakima County destroyed 100% of the vegetation along Wide Hollow Creek at S. 96<sup>th</sup> Avenue (2014-2015). And note that Yakima County plans on destroying 100% of trees along Wide Hollow Creek including West Valley Park and the jurisdictional watercourse extending to S. 91<sup>st</sup> Ave. Ms. Catherine Reed and Ecology are aware that Yakima County destroyed 100% of the trees along Wide Hollow Creek at S. 96<sup>th</sup> Avenuen. And Catherine Reed is aware that Yakima County unlawfully dredged Wide Hollow Creek without

- issuance of a lawful COE 404 Fill & Dredge permit.
- Hyporheic zone disruption is barred within regulated FEMA floodplains. Note that Yakima County project plans for the Shaw Creek project involves hyporheic zone disruption in violation of Federal law (NFIP regulations). Hyporheic zone disruption, as planned by Yakima County, will cause the discharge of sewage, arsenic, and lead into the drinking water supply of Yakima. Catherine Reed and Ecology are aware that Yakima County plans unlawful hyporheic zone disruption of Shaw Creek.
  - An applicant/developer who notes that “conditions on the ground” differ from the content of the regulatory FEMA 100-year Floodplain maps possesses the duty to revise FEMA maps prior to development. Note that Yakima County is the applicant/developer for the Shaw Creek flood control project and Yakima County notes that conditions on the ground at the Bainter site differ from the content of the regulatory FEMA maps. So Yakima County must revise FEMA maps prior to development. To the contrary, the applicant/developer (Yakima County) has not lawfully revised the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps prior to planned Shaw Creek development.
6. **1992** – Yakima County officials and WDFW officials participate in the relocation of Shaw Creek into a series of ditches; the ditches are located to the west of S. 96<sup>th</sup> Avenue. The year of the Shaw Creek relocation may be 2004 and not 1992. Ostensibly permits were not issued for relocate the jurisdictional watercourse; so a Clean Water Act violation occurred. Officials at Yakima County and officials at the WDFW have not been held accountable for violations of Federal law.
7. **January 10, 2005** – On January 10, 2005 Zoning Ordinance 14-2004 was approved that included the altered version of Exhibit 5. Following conclusion of open-record hearings, the circulated version of Exhibit 5 was removed from Zoning Ordinance 14-2004 by Mr. Thomas Durant (Consultant to Mr. Bainter) and Mr. Phil Hogge (Yakima county Planning). During the exclusive meetings after the conclusion of open-record hearings, the replacement of Exhibit 5 caused

- significant changes in vehicular access to the commercial zoning district and significant changes to the buffer zones at the periphery of the commercial zoning district. However, Exhibit 5 does affirm the location of the jurisdictional watercourse (Shaw Creek) and the associated location of the B-2/R-1 zoning boundary line. Exhibit 5, within ZO 14-2004, establishes the lawful location of Shaw Creek at the Bainter site. The lawful location of Shaw Creek at the Bainter site is confirmed by ZO 14-2004 which is the same location identified on the regulatory and controlling Shaw Creek FEMA 100-year floodplain maps of 2012. Yakima County, Mr. Phil Hogge (Yakima County), Mr. Greg Bainter, and Mr. Thomas Durant collude to perform a flagrant violation of the State Growth Management Act by performing a switch of the site plan (Exhibit 5) following conclusion of open-record hearings. In addition, Yakima County, Mr. Phil Hogge (Yakima County), Mr. Greg Bainter, and Mr. Thomas Durant collude to significantly change the Development Agreement within ZO14-2004 following the conclusion of open-record hearings. Yakima County, Mr. Phil Hogge (Yakima County), Mr. Greg Bainter, and Mr. Thomas Durant demonstrated contempt for the rule of law by participation in a flagrant violation of the State Growth Management Act.
8. **July 26, 2005** – On July 26, 2005, the Washington Department of Fish & Wildlife drafted a letter (authored by Mr. Eric Bartrand) indicating that Shaw Creek was unlawfully dredged and filled by Mr. Greg Bainter. Mr. Greg Bainter had piled dredged material from Shaw Creek within Fish & Wildlife critical areas; photos accompanying the letter show the unlawful dredge and fill. Mr. Greg Bainter threatened to kill the WDFW inspector by shooting him; this fact is recorded within the WDFW file dealing with investigation of the Bainter environmental crimes of 2004.
9. **August 2, 2005** – On August 2, 2005, the Washington Department of Fish & Wildlife created a letter affirming that Mr. Greg Bainter was cited for unlawful

fill & dredge of Shaw Creek.

**10. November, 2004** – In November, 2004, Mr. Greg Bainter was observed dredging Shaw Creek by Mr. Glen Radke. Without permits, Mr. Bainter performed unlawful dredge of this jurisdictional watercourse (Shaw Creek). The unlawful dredging was affirmed by WDFW (Washington Department of Fish & Wildlife) records dealing with environmental crimes at the Bainter site (2004-2005). Mr. Bainter was issued a citation (notice of violation) due to unlawful dredging (and placement of fill) of a jurisdictional watercourse (Shaw Creek). Mr. Greg Bainter is observed unlawfully dredging Shaw Creek and piling excavation spoils along the jurisdictional watercourse. When an investigation was performed by the Washington Department of Fish & Wildlife, Mr. Bainter threatened to shoot and kill the WDFW inspector. Subsequently Mr. Bainter was issued a notice of violation and was mandated to remove the unlawful excavation spoils from the Riparian Habitat Zone along Shaw Creek. However, Mr. Bainter was not issued a citation for violations of the Federal Clean Water Act.

**11. January, 2007** – In January, 2007 a site plan was created by Mr. Thomas Durant (consultant) for Mr. Glen Radke who lives at 8910 Tieton Drive, Yakima, WA. Mr. Glen Radke and Mr. Greg Bainter (Bainter Group LLC) are the property owners within the B-2 commercial zoning district along Shaw Creek. The site plan of 2007 principally involved the primary parcel of land owned by Mr. Glen Radke; this primary parcel is parcel 21002. Subsequently Mr. Radke purchased parcel 21005 located to the south of parcel 21002. Parcel 21005 is located along the north bank of Shaw Creek. The site plan created by Mr. Thomas Durant in January, 2007 also demonstrated the lawful position of Shaw Creek at the Bainter site on parcel 21401. The lawful location of Shaw Creek at the Bainter site is confirmed by the site plan of January 2007 which is the same location identified on the regulatory and controlling Shaw Creek FEMA 100-year floodplain maps of 2012.

12. **July 27, 2007 continued** – On July 27, 2007, Mr. Greg Bainter and Mr. Glen Radke utilized their consultant, Mr. Thomas Durant, to prepare and submit a SEPA Checklist and application. The SEPA application materials of July 27, 2007 affirm that Shaw Creek is a perennial stream and a fish-bearing stream. Also, the SEPA application of July 27, 2007 affirmed that Shaw Creek is a migration route for salmon. These SEPA documents (from 2007) also indicate that excavations will require pumping when water (surface water and groundwater) enters excavated trenches at the site.
13. **July 27, 2007 continued** – On July 27, 2007 a ‘Final Site Plan’ was created and submitted with the SEPA Checklist of the same date in support of a Shaw Creek development project by Mr. Greg Bainter and Mr. Glen Radke. The ‘Final Site Plan’ shows that a trench would cross the location of a jurisdictional stream, Shaw Creek; the location of Shaw Creek is demonstrated within the legally defined location. The lawful location of Shaw Creek at the Bainter site is confirmed by the site plan of January 2007 which is the same location identified on the regulatory and controlling Shaw Creek FEMA 100-year floodplain maps of 2012.
14. **2011** – Mr. Jeff Legg (Yakima County) and Mr. Cliff Bennett received word from FEMA that Yakima County would receive a \$2.7 million FEMA PDM grant to perform a Shaw Creek flood project; the \$2.7 million grant would only be released following a NEPA process where “full-disclosure” of adverse environmental impacts would be required.

Note that Yakima County preemptively destroyed jurisdictional Shaw Creek wetlands in 2012 prior to the NEPA process. And Yakima County concealed the October 2015 wetland report from FEMA and from members of the public during the NEPA process; so, Yakima County disallowed “full-disclosure” of adverse environmental impacts during the NEPA process. The pre-planned destruction of the Shaw Creek watercourse and the pre-planned destruction of Shaw Creek jurisdictional wetlands were well-documented violations of the Federal Clean

Water Act (2012; Bainter site; Shaw Creek). Ms. Catherine Reed and Ecology are aware that Yakima County received word of the \$2.7 million grant from FEMA in 2011.

15. **2011** – Mr. Jeff Legg documented that he was contacted by Mr. Greg Bainter. Mr. Greg Bainter sought out Mr. Jeff Legg and Yakima County to perform the role of “agent” for a fictitious Shaw Creek habitat improvement project. While Mr. Legg, Yakima County, and Mr. Bainter informed planning officials and informed members of the public about a fictitious habitat improvement project, Mr. Legg, Yakima County, and Mr. Bainter recorded the secretive plans to destroy the habitat of Shaw Creek. Mr. Legg, Yakima County, and Mr. Bainter pre-planned the relocation of the jurisdictional Shaw Creek watercourse into a man-made ditch. Mr. Legg, Yakima County, and Mr. Bainter pre-planned the filling of the jurisdictional Shaw Creek watercourse. Mr. Legg, Yakima County, and Mr. Bainter pre-planned the filling of jurisdictional Shaw Creek wetlands. Yakima County performed a flagrant violation of the Growth Management Act by knowingly misinforming members of the public about the Shaw Creek project of 2012. Ms. Catherine Reed and Ecology are aware that Mr. Legg and Yakima County performed the role of “agent” for Mr. Bainter in 2012 when violations of the Clean Water Act occurred.

16. **2011** – Mr. Legg and Mr. Bainter were informed by Mr. Jeff Peters at the City of Yakima that the jurisdictional Shaw Creek watercourse is officially a stream while the man-made ditch is not a critical area. Subsequently, Yakima County and Mr. Bainter unlawfully indicated that the man-made ditch was a stream. Ms. Catherine Reed and Ecology are aware that the jurisdictional Shaw Creek watercourse is a stream. Ms. Catherine Reed and Ecology are aware that the man-made ditch at the Bainter site is not the location of the jurisdictional Shaw Creek watercourse; similarly, Reed and Ecology know that the ditch is not a critical area.

Reed and Ecology also know that Yakima County and Mr. Bainter unlawfully



declare that the man-made ditch under unlawful use has now become stream despite abundant documentation that the ditch is not a critical area. In 2016, Ms. Catherine Reed (Ecology) delivered to the USACE falsified wetland and watercourse reports that unlawfully demonstrated the location of Shaw Creek; the falsified wetland report of 2016 indicated that the man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse. So Ms. Catherine Reed and Ecology knowingly delivered falsified materials to the USACE in an effort to dupe Federal officials (i.e. USACE officials) into believing that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse.

17. **2011** – Mr. Legg and Mr. Bainter were informed by Mr. Eric Bartrand of the Washington Department of Fish & Wildlife that the jurisdictional Shaw Creek watercourse is officially a stream. Subsequently, Yakima County and Mr. Bainter unlawfully indicated that the man-made ditch was a stream. Ms. Catherine Reed and Ecology are aware that Yakima County and Mr. Bainter declare that the man-made ditch under unlawful use is a stream and also unlawfully declare that the ditch is the location of the jurisdictional Shaw Creek watercourse.

18. **September 1, 2011** – On September 1, 2011 a land survey of the Bainter site along Shaw Creek was created. The centerline of the Shaw Creek, jurisdictional watercourse is recorded on the survey of September 1, 2011. The centerline of the Shaw Creek is noted to be the location of the Shaw Creek watercourse that is also defined by the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Subsequently both Bainter and Yakima County unlawfully indicated that a man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse; to the contrary, the regulatory FEMA maps affirm that the man-made ditch is not the location of the jurisdictional Shaw Creek watercourse.

19. **September 9, 2011 Survey map of 2011 and lot fusion of 2011 09092011-1**  
On September 9, 2011, a survey map of the Bainter site was used as a site plan

where portions of the Bainter site were joined into a single parcel. Mr. Bainter knew that the location of Shaw Creek was the boundary line between two parcels. And Mr. Bainter anticipated that the location of Shaw Creek would move to the south. Prior to the unlawful relocation of Shaw Creek, Mr. Bainter eliminated any chance that the property boundary lines would define the location of the jurisdictional watercourse (Shaw Creek). By joining various parcels, the location of Shaw Creek no longer defined a boundary line between parcels. However, a large lot, dominating the site, existed at the time of Clean Water Act violations in 2012 (i.e. April-May 2012).

- 20. October 26, 2011 – Halpern email – monitor list    10262011-1** On October 26, 2011, Mr. Halpern of the Washington State Noxious Weed Control Board drafted a letter to Yakima County indicating that willow trees would not be added to the list of noxious and invasive weeds. Regardless, Yakima County has created a long-term initiative to destroy willow trees along Wide Hollow Creek in order to dredge and widen the jurisdictional watercourse. Since 2011, Yakima County has been that State of Washington Proponent of an initiative to destroy trees along the course of jurisdictional streams. Yakima County sought justification for tree destruction by declaring trees as being noxious and invasive weeds. The Washington State Noxious Weed Control Board extinguished any legal justification used by Yakima County to destroy trees. The Washington State Noxious Weed Control Board did NOT add willow trees (as proposed by Yakima County) to the list of noxious and invasive weeds.

At S. 96<sup>th</sup> Ave., Yakima County destroyed all of the trees along the north bank and south bank of Wide Hollow Creek, using the justification that the trees were “noxious weeds”. To the contrary, mature trees along trees in Yakima County have not been declared as being “noxious weeds” by the State of Washington Noxious Weed Control Board. Yakima County possessed no legal justification to destroy trees along the course of jurisdictional streams.

Within SEP2016-00029, Yakima County proposes to destroy all mature trees (100% of trees; 760 trees) along the north bank of Wide Hollow Creek. Yakima County states that they are justified in removing all trees since these are, per Yakima County, “noxious weeds”. The project area along Wide Hollow Creek extends for more than one mile and all of the trees will be destroyed. As noted, the destruction of 760 trees is not supported by any formal listing on the Washington State Noxious Weed list. In addition, the destruction of 100% of trees within the Riparian Habitat Zone of Wide Hollow Creek is a violation of NFIP regulations. NFIP regulations bar removal of more than 35% of trees within a project area.

Ms. Catherine Reed and Ecology are aware of the unlawful destruction of trees along Wide Hollow Creek by Yakima County. In addition, Ms. Catherine Reed and Ecology are aware of the proposed destruction of 100% of trees along Wide Hollow Creek during the proposed flood project.

21. **December 23, 2011** – On December 23, 2011, Mr. Jeff Legg of the Yakima County Surface Water Division created an e-mail and sent the e-mail to Mr. Greg Bainter; within the e-mail, Mr. Jeff Legg indicated that he would begin to create the application documents for the Bainter-Shaw Creek development project. The project documents for the 2011-2012 Bainter project affirm that the agent of Mr. Bainter was Mr. Jeff Legg (FCZD). As “agent”, Mr. Jegg Legg (FCZD) created application materials, site plans, and diagrams. The Bainter-Shaw Creek development project was described as a “habitat improvement project” involving Shaw Creek and critical areas associated with Shaw Creek. Members of the public were subsequently provided public notice that a habitat improvement project would take place at the Bainter site. Ms. Catherine Reed and Ecology are aware that Yakima County served as “agent” for Mr. Bainter in 2011 and 2012 when Clean Water Act violations occurred at the Bainter site.

22. **December 27, 2011** – On December 27, 2011, Mr. Jeff Legg (FCZD) sent an e-mail to Mr. Jeff Peters at the City of Yakima dealing with the Bainter

development project involving Shaw Creek. Mr. Jeff Legg created questions dealing with wetlands at the Bainter site.

**23. December 30, 2011** – On December 30, 2011, Mr. Jeff Peters (City of Yakima) created and sent an e-mail to Mr. Jeff Legg (Yakima County); Mr. Peters and the City of Yakima affirmed that Shaw Creek is a stream. Mr. Peters affirmed that Shaw Creek is a jurisdictional watercourse. The emails affirm that the location of the jurisdictional watercourse is a stream while the location of the man-made ditch is not a critical area.

**24. 2012** -- In 2012, Mr. Eric Bartrand and the Washington Department of Fish & Wildlife created a commenting letter in support of the Bainter development project involving Shaw Creek. Within the 2012 commenting letter to Mr. Benson (City of Yakima), Mr. Eric Bartrand and the WDFW indicated that the Bainter project (stream relocation) is a “periodic maintenance and reconstruction activity”. Mr. Bartrand and the WDFW “most adamantly urges the City of Yakima to support a complete relocation of all surface waters associated with Shaw Creek”. According to Mr. Eric Bartrand and the WDFW, Shaw Creek is “an ongoing nuisance to (Mr. Bainter)”.

*Comment – Publically, Mr. Bainter proposed to pay for a habitat improvement project that would benefit fish within Shaw Creek; at the same time, Mr. Bainter indicated that Shaw Creek was a nuisance to him and wanted Shaw Creek moved off of his land. On his own initiative, Mr. Bainter stated that he would create a 14,000 square foot habitat zone along the jurisdictional Shaw Creek watercourse. Secretly, Mr. Bainter considered Shaw Creek “an ongoing nuisance” and was planning the secretive destruction of the jurisdictional watercourse and secretive destruction of jurisdictional wetlands. Ms. Catherine Reed and Ecology are aware of the 2012 environmental crimes at the Bainter site that were pre-planned*

*by Yakima County.*

25. **January 3, 2012** – On January 3, 2012, Mr. Jeff Legg (Yakima County; FCZD) created and sent an e-mail to Mr. Jeff Peters (City of Yakima). Within the e-mail, Mr. Jeff Legg and Yakima County documented and affirmed that Shaw Creek is a stream.
26. **January 26, 2012** – On January 26, 2012, Mr. Greg Bainter signed and submitted a SEPA Checklist; the SEPA Checklist was submitted to the City of Yakima. Mr. Greg Bainter indicated that the project was a Shaw Creek habitat improvement project. Mr. Bainter did not truthfully record within the SEPA checklist that he possessed secretive plans to relocate Shaw Creek into a man-made ditch. And Mr. Bainter did not truthfully record on the SEPA checklist that he would illegally fill the jurisdictional watercourse, illegally fill the charted floodway, and illegally fill jurisdictional wetlands. The agent for Mr. Bainter was Yakima County and Mr. Jeff Legg (Yakima County).

Three elements of the Bainter habitat project of 2012: The Bainter habitat improvement project of 2012 was, per publically available documents, a three element project as follows:

- 1) A 14,000 square foot habitat improvement zone with dogwood trees and wild roses would be planted along the location of the jurisdictional watercourse (Shaw Creek), benefitting local populations of trout and minnows within the watercourse.
- 2) The jurisdictional Shaw Creek watercourse would be dredged.
- 3) A dry, man-made ditch would be constructed 80-feet to the south of the jurisdictional watercourse.

Secret project elements of the Bainter project (2012): While local government officials (Mr. Legg; Mr. Peters) ensured that members of the public were provided with information about the three project elements (above), they also ensured that members of the public did not receive information about secret plans to relocate Shaw Creek into the man-made ditch. Mr. Legg and Mr. Peters also ensured that members of the public did not receive information about the secret plan to use excavation spoils to fill the jurisdictional watercourse and to fill jurisdictional wetlands. The secret plan to destroy Shaw Creek and destroy Shaw Creek critical areas was recorded within a prescription issued by Mr. Eric Bartrand (fish-biologist; WDFW); this prescription was delivered to Mr. Peters and to Mr. Legg. Additional materials (emails, letters) affirm that a secret plan was created in advance to relocate Shaw Creek into a man-made ditch at the Bainter site.

*Comment – Within SEPA materials, Mr. Greg Bainter did not indicate that Shaw Creek would be destroyed, filled, and relocated into a man-made ditch. Ms. Catherine Reed and Ecology are aware of the role played by Yakima County, the WDFW, and the City of Yakima with the Clean Water Act violations at the Bainter site in 2012.*

27. **January 26, 2012** – On January 26, 2012, Mr. Greg Bainter submitted the September 30, 2010 “Preliminary FEMA Flood Map” with his SEPA application materials. The “Preliminary FEMA Flood Map” submitted by Mr. Greg Bainter demonstrated the lawful location of the Shaw Creek floodway, the lawful location of the Shaw Creek watercourse, and the lawful margins of the Shaw Creek FEMA 100-year Floodplain.

*Comment – The regulatory and controlling Shaw Creek FEMA 100-year Floodplain map must be utilized by all officials to determine the location of the Shaw Creek floodway and the Shaw Creek watercourse; no person can arrive at a determination that Shaw Creek is located in a position that differs from the location indicated by the regulatory FEMA maps. Local community officials*

*include those who work for the City of Yakima and Yakima County. The City of Yakima and Yakima County are “NFIP communities”; officials in these NFIP communities are mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the Shaw Creek floodway (including the location of the jurisdictional watercourse). To the contrary, City of Yakima officials (i.e. Mr. Jeff Peters) and Yakima County officials (i.e. Mr. Bennett, Mr. Gumz, Mr. Carroll) do not utilize the regulatory and controlling Shaw Creek FEMA 100-year floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse. Ms. Catherine Reed and Ecology are also mandated to utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the charted Shaw Creek floodway (with the included location of the jurisdictional watercourse).*

28. **January 26, 2012** – On January 26, 2012, Mr. Greg Bainter submitted a Critical Areas Identification form to the City of Yakima for the habitat improvement project. Within the January 26, 2012 Critical Areas Identification form, Mr. Bainter indicated that Shaw Creek is a fish-bearing stream with populations of minnows and speckled dace.

*Comment – Within the Critical Area Identification form, Mr. Bainter did not truthfully indicate that he would relocate Shaw Creek into a man-made ditch. And Mr. Bainter did not truthfully indicate that he would place “excavation spoils” into the jurisdictional watercourse (Shaw Creek).*

29. **January 26, 2012** – On January 26, 2012, Mr. Greg Bainter submitted “Attachment 1 – Existing Vegetation”; this attachment affirms the lawful location of the Shaw Creek watercourse. The lawful location of the Shaw Creek watercourse is under mature trees at the Bainter site. The location of Shaw Creek within Attachment 1 is consistent with the location of the jurisdictional watercourse identified by the regulatory and controlling Shaw Creek FEMA 100-

year Floodplain maps.

30. **January 26, 2012** – On January 26, 2012, Mr. Greg Bainter submitted “Attachment 3 – Project Plan” where the lawful location of the Shaw Creek watercourse is documented. The location of Shaw Creek within Attachment 3 is consistent with the location of the jurisdictional watercourse identified by the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Ms. Catherine Reed and Ecology are aware of the lawful location of the jurisdictional Shaw Creek watercourse at the Bainter site of Shaw Creek.
31. **February 2012** – In February 2012, Catherine Reed of Ecology indicated that she submitted a letter to the City of Yakima. In the letter she indicated that use of the man-made ditch as the watercourse for Shaw Creek represents a flood-risk to the adjacent community. Within the letter, Catherine Reed indicated that a wetland assessment of the Bainter site should be performed. Ms. Catherine Reed and Ecology are aware that the man-made ditch at the Bainter site is now under unlawful use, carrying waters of Shaw Creek despite the fact that permits for the watercourse relocation were not issued. Catherine Reed is aware that the adjacent community is at risk of flooding due to insufficient conveyance capacity of the ditch. Catherine Reed and Ecology are aware that the adjacent community was flooded on February 21, 2017 as a direct result of Clean Water Act violations at the Bainter site of Shaw Creek (2012). In addition, Catherine Reed and Ecology are aware that jurisdictional wetlands were illegally filled at the Bainter site of Shaw Creek in 2012.
32. **2012** - A commenting letter from Catherine Reed and Ecology was drafted pertaining to the Bainter project (Shaw Creek; 2012). Catherine Reed indicated that a wetland report should be performed; in reality, a wetland report was not created by Mr. Bainter in 2012. Catherine Reed (Ecology) indicated concerns with the construction of an “overflow channel”; specifically, Ms. Reed stated that a flood-risk existed to the adjacent community if Shaw Creek were to relocate



into the so-called “overflow channel” (i.e. man-made ditch). Abundant evidence affirms that the waters of Shaw Creek were unlawfully relocated into the man-made ditch at the time of the project in 2012. Five years later, on February 21, 2017, overbank flooding from the man-made ditch under unlawful use caused extensive flooding of the adjacent community. Ms. Catherine Reed and Ecology are aware that Yakima County and Mr. Bainter unlawfully relocated the waters of Shaw Creek into a ditch with insufficient conveyance; Ms. Catherine Reed is aware that overbank flooding from the man-made ditch under unlawful use caused flooding of the adjacent community.

33. **2012** – An unlawful, secretive and corrupt prescription scheme was used by Mr. Jeff Legg (Yakima County), Mr. Greg Bainter (Bainter Group LLC), and Mr. Eric Bartrand (WDFW). The prescription scheme also involved Mr. Jeff Peters at the City of Yakima. Members of the public were informed about a fictitious habitat improvement project along Shaw Creek at the Bainter site. However, Legg, Bainter, Bartrand and Peters created a secretive plan to destroy the habitat of Shaw Creek. The issued prescription in April, 2012, demonstrated pre-planned violations of the Federal Clean Water Act. The prescription recorded the planned relocation of Shaw Creek into a ditch and the planned filling of the jurisdictional watercourse with excavation spoils. The violators knowingly misinformed members of the public in 2012 about the Bainter project; by misinforming the public, they violated the State Growth Management Act. Ms. Catherine Reed and Ecology are aware that Yakima County and Mr. Bainter used an unlawful prescription scheme to violate the Federal Clean Water Act in 2012. Ms. Catherine Reed and Ecology are aware that the 2012 Shaw Creek Clean Water Act violations were pre-planned by Yakima County, WDFW, Bainter, and the City of Yakima.

34. **2012** – Mr. Jeff Peters at the City of Yakima was informed repeatedly in advance that Shaw Creek would be secretly relocated into a man-made ditch in violation of local permits and in violation of the Federal Clean Water Act. Mr. Peters and the

- City of Yakima did not stop Mr. Legg, Yakima County, and Mr. Bainter from violating the Federal Clean Water Act, destroying Shaw Creek, destroying wetlands, and destroying other critical areas at the Bainter site. Ms. Catherine Reed and Ecology are aware that Mr. Jeff Peters was involved with the prescription scheme of 2012 where the pre-planned Clean Water Act involving Shaw Creek was made known, in advance, to Mr. Peters and the City of Yakima.
35. **2012** – Jurisdictional Shaw Creek wetlands were preemptively filled in 2012 at the Bainter site; this was a well-documented violation of the Federal Clean Water Act. Ms. Catherine Reed and Ecology are aware that jurisdictional Shaw Creek wetlands were illegally filled in 2012. The Bainter project started on April 30, 2012.
36. **2012** –Shaw Creek was unlawfully relocated into a man-made ditch at the Bainter site; this was a well-documented violation of the Federal Clean Water Act. Ms. Catherine Reed and Ecology are aware that Shaw Creek was relocated into a man-made ditch in violation of the Federal Clean Water Act (2012; Bainter site). The Bainter project started on April 30, 2012.
37. **2012** – The jurisdictional Shaw Creek watercourse was unlawfully filled with excavation spoils in 2012; this was a well-documented violation of the Federal Clean Water Act. Ms. Catherine Reed and Ecology are aware that the jurisdictional Shaw Creek watercourse was unlawfully filled with excavation spoils in 2012. The Bainter project started on April 30, 2012.
38. **2012** – The City of Yakima and Yakima County are NFIP communities that are mandated to inform Ecology, inform FEMA, and inform the adjacent community at the time of a relocation of a jurisdictional watercourse; the City of Yakima and Yakima County violated NFIP regulations by failing to provide the mandatory legal notice to Ecology, to FEMA, and to the adjacent community. The adjacent

community was placed at risk of flooding at the time of the unlawful relocation of Shaw Creek. And on February 21, 2017, overbank flooding from the man-made ditch under unlawful use (Bainter site) caused extensive flooding of the adjacent community. Ms. Catherine Reed and Ecology are aware that Yakima County and the City of Yakima did not comply with NFIP regulations in 2012 by providing the mandated legal notification to FEMA, to Ecology, and to the adjacent community (i.e. regarding the pre-planned relocation of Shaw Creek into a man-made ditch).

39. **2012** – The City of Yakima and Yakima County are mandated to retain permits for development projects within regulated FEMA floodplains; this mandate is per NFIP regulations (Federal law). The City of Yakima and Yakima County violated NFIP regulations by failing to require the developer (Bainter) to possess a COE 404 Fill & Dredge permit at the time of filling (watercourse; wetlands) and at the time of the Shaw Creek watercourse relocation.
40. **2012** – NFIP regulations that apply to the City of Yakima mandate that copies of permits are retained within project files. The HPA (prescription) crafted by Mr. Eric Bartrand in 2012 has not been retained within the City of Yakima project files for the Bainter project of 2012.
41. **2012** - The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps were formally adopted. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps indicate the location of the charted Shaw Creek floodway with the jurisdictional watercourse located within the charted floodway. The regulatory FEMA maps became official in July of 2012. Ms. Catherine Reed and Ecology are aware that the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps indicate that the man-made ditch under unlawful use is NOT the location of the jurisdictional Shaw Creek watercourse. The Washington State Department of Ecology issued a grant to West Consultants to perform the required “flood insurance re-study” and then create the regulatory and controlling

Shaw Creek FEMA 100-year Floodplain maps. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps were preliminary in 2011 and became official in July, 2012.

42. **2012** – Since 2012, Mr. Bainter unlawfully has indicated that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. Ms. Catherine Reed and Ecology are aware that Bainter and Yakima County unlawfully declare that the man-made ditch is the location of the jurisdictional watercourse; yet Bainter, Yakima County, Ecology, and all officials must utilize the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse.
43. **2012** – Since 2012, Mr. Bainter, as a developer, notes that “conditions on the ground” differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Specifically, Mr. Bainter is a developer who notes that water is flowing within the man-made ditch (without issuance of permits) and water is not flowing within the location of the jurisdictional watercourse as defined by regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Similarly, Ms. Catherine Reed and Ecology are aware that water is unlawfully flowing within the man-made ditch under unlawful use (Bainter site).
44. **2012** – Since 2012, Yakima County (i.e. Mr. Cliff Bennett; others), as a developer, notes that “conditions on the ground” differ from the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Specifically, Yakima County is a developer who notes that water is flowing within the man-made ditch (without issuance of permits) and water is not flowing within the location of the jurisdictional watercourse as defined by regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. Similarly, Ms. Catherine Reed and Ecology are aware that water is unlawfully flowing within the man-made ditch under unlawful

use (Bainter site).

45. **2012** – Since 2012, Mr. Bainter unlawfully asserts that his B-2 commercial zoning district has expanded as a result of the Clean Water Act violations of 2012. Specifically, Mr. Bainter unlawfully states that the B-2/R-1 zoning boundary line is defined by the centerline of the man-made ditch under unlawful use. In other words, Mr. Bainter unlawfully states that the B-2/R-1 zoning boundary line is not defined by the centerline of the jurisdictional watercourse as defined by the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. So, Mr. Bainter unlawfully states he has gained wealth in the form of new B-2 commercial land as a result of his Clean Water Act violations of 2012.

46. **2012** – Since 2012, Yakima County has unlawfully asserted that the man-made ditch under unlawful use (Bainter site) is the location of the jurisdictional Shaw Creek watercourse. By preemptively destroying Shaw Creek jurisdictional wetland prior to the NEPA process for the FEMA PDM grant, Yakima County was a developer who sought to gain wealth resulting from well-documented violations of the Federal Clean Water Act. Specifically, Yakima County sought to gain \$2.7 million from FEMA following the Clean Water Act violations where Shaw Creek wetlands were preemptively filled and destroyed (Bainter site; 2012). Ms. Catherine Reed and Ecology are aware of the Yakima County scheme to achieve wealth resulting from violations of the Federal Clean Water Act.

47. **2012** – At the time of the Shaw Creek watercourse relocation, the City of Yakima, Yakima County, and Mr. Greg Bainter (Bainter Group LLC) did not make lawful revisions to the regulatory and controlling Shaw Creek FEMA 100 year Floodplain maps. According to FEMA, the Clean Water Act violations at the Bainter site of Shaw Creek did not result in a relocation of the jurisdictional watercourse. Ms. Catherine Reed and Ecology are aware of the content of the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps. The regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps affirm

- that the location of the man-made ditch under unlawful use is NOT the location of the jurisdictional Shaw Creek watercourse.
48. **2012** – At the time of the Shaw Creek watercourse relocation at the Bainter site in 2012, the City of Yakima (and Yakima County) did not comply with NFIP regulations by lawfully informing FEMA, informing Ecology, and informing the adjacent community that Shaw Creek was relocated (i.e. relocation of Shaw Creek into a man-made ditch). Catherine Reed and Ecology are aware of this fact.
49. **2012** – While some Shaw Creek wetlands were preemptively destroyed at the Bainter site in 2012, a remnant of wetland area was not destroyed on the east side of the Bainter site. Ms. Catherine Reed and Ecology are aware that a remnant of wetlands on the east side of the Bainter site was not destroyed during Shaw Creek Clean Water Act violations of 2012.
50. **2013** – Fulcrum wetland consultants were hired by Mr. Bainter to identify jurisdictional Shaw Creek wetlands at his site; a remnant of wetland area that was not destroyed in 2012 was identified by Fulcrum wetland consultants. Ms. Catherine Reed and Ecology are aware that a remnant of wetlands on the east side of the Bainter site was not destroyed during Shaw Creek Clean Water Act violations of 2012.
51. **2013** – Fulcrum consultants did affirm, in a test pit diagram, that Shaw Creek had been relocated at the Bainter site. However, insufficient information is contained within the Fulcrum wetland report about the well-documented violations of the Federal Clean Water Act that resulted in the relocation of Shaw Creek into the man-made ditch. Ms. Catherine Reed and Ecology are aware that Shaw Creek was relocated without lawful permits at the Bainter site in 2012.
52. **2013** – Fulcrum consultants ignore forensic wetlands at the Bainter site that are buried under tons of unlawful fill. Ms. Catherine Reed and Ecology are aware of

- the content of the Fulcrum wetland report, showing only the remnant of wetland on the east side of the Bainter site. Ms. Catherine Reed is aware that the Fulcrum wetland report did not identify forensic wetlands buried under illegal fill following Clean Water Act violations of 2012.
53. **2013** – At the Abarta site of Shaw Creek, the prescription scheme was used to dredge Shaw Creek in order to lower the level of groundwater. Mr. Eric Bartrand crafted another, unlawful prescription used to violate the Federal Clean Water Act.
54. **2014** – Mr. Bainter proposed excavation across the man-made ditch under unlawful use at the Bainter site; Mr. Bainter hired Mr. Thomas Durant has a consultant to prepare project application materials (SEPA, Critical Area, JARPA, site plans, wetland study). Ms. Catherine Reed and Ecology are aware of the Bainter sewer project, designed to excavate across the man-made ditch under unlawful use.
55. **2014** – Mr. Bainter and Mr. Durant unlawfully indicated that the man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse. Mr. Bainter and Mr. Durant unlawfully submitted project materials to the City of Yakima to perform a sewer excavation project at the site. Ms. Catherine Reed and Ecology are aware of the Bainter project to excavate across the man-made ditch under unlawful use.
56. **2014** – At the Radke site of Shaw Creek, just two months prior to NEPA wetland studies of Shaw Creek, Mr. Radke performed unlawful excavation, dredging, and wetland destruction within and around the jurisdictional Shaw Creek watercourse. No permits were issued for the excavations at the Radke site. No meaningful investigation was performed of the Clean Water Act violations by the City of Yakima or by Ecology. Ostensibly, Ms. Catherine Reed of Ecology peered at the Radke site from the Bainter parcel; Ms. Catherine Reed did not actually walk

through the Radke site to inspect critical area damage along Shaw Creek.

57. **2014** – In 2014, Catherine Reed (Ecology) made site visits to the Bainter site to affirm the content of the Fulcrum wetland study; Catherine Reed viewed the Bainter site and affirmed that the only wetland at the site was the remnant on the east side of the site. Catherine Reed (Ecology) did not indicate that jurisdictional wetlands had been filled under tons of unlawful fill at the Bainter site. Catherine Reed (Ecology) did not indicate that the course of the man-made ditch under unlawful use at the Bainter site was a jurisdictional wetland under the protection of the Federal Clean Water Act.
58. **2014** – In 2014, Mr. Jeff Peters of the City of Yakima issued a SEPA authorization and a Critical Area Permit to Mr. Bainter to excavate across the man-made ditch under unlawful use; however, Mr. Jeff Peters unlawfully indicated that the man-made ditch under unlawful use was the location of the jurisdictional Shaw Creek watercourse.
59. **2014** - In 2014, Ms. Jeanna Paluzzi (Yakima County) used the unlawful prescription scheme to obtain another prescription, issued by Mr. Eric Bartrand. The prescription issued by Mr. Eric Bartrand (WDFW) indicated that Clean Water Act violations were planned for the Wide Hollow Creek watercourse at S. 96<sup>th</sup> Avenue. The Wide Hollow Creek watercourse would be dredged and new “finger channels” constructed at the site. A COE 404 Fill & Dredge permit was not issued so Clean Water Act violations occurred. In addition, FIFRA violations occurred when Yakima County used imazapyr within and near Wide Hollow Creek to poison all trees along the jurisdictional stream. The critical areas of Wide Hollow Creek at S. 96<sup>th</sup> Avenue were significantly destroyed by Yakima County.
60. **2014-2015** – During Open-Record Appeal Hearings, presented to the Hearing Examiner of Yakima, Mr. Bainter and Mr. Durant withdrew the previous site plan and submitted a differing version of the site plan. The second version of site plan



indicated that the man-made ditch under unlawful use was located outside of the Shaw Creek FEMA 100-year floodplain. The second version of site plan, submitted by Mr. Bainter and Mr. Durant, showed that the adjacent community was at-risk of flooding from the man-made ditch under unlawful use. The site plan affirmed that Mr. Bainter had unlawfully relocated the ditch to a location outside of the Shaw Creek FEMA 100-year Floodplain. Overbank flooding in the portion of the ditch that is outside of the FEMA floodplain could carry floodwaters into the Cottonwood Grove subdivision. Of note, on February 21, 2017, overbank flooding from the man-made ditch under unlawful use caused significant flooding of the adjacent community. Furthermore, the portion of the man-made ditch under unlawful use that flooded was the portion of the ditch located outside of the Shaw Creek FEMA 100-year Floodplain.

61. **2014-2015** - During Open Record Appeal Hearings Mr. Bainter agreed, verbally, that the centerline of the man-made ditch under unlawful use is not the location of the B-2/R-1 boundary line. Mr. Bainter agreed that the location of the jurisdictional watercourse, per regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps, define the location of the B-2/R-1 boundary line.
62. **2014-2015** – At the conclusion of the Open Record Appeal Hearings, the Hearing Examiner allowed Mr. Bainter to move forward with development of the site despite the fact that Mr. Bainter had knowingly violated the Federal Clean Water Act and preemptively destroyed the environment of Shaw Creek. The decision of the Hearing Examiner was, without question, erroneous; an appeal was filed within Superior Court.
63. **2015** – Shortly prior to trial within Superior Court, Mr. Bainter and Mr. Durant created a second version of JARPA for the sewer project, submitted the JARPA to Mr. Eric Bartrand (WDFW), and then obtained another unlawful prescription. The unlawful prescription crafted by Mr. Bartrand indicated that Mr. Bainter and Mr. Durant planned to dam Shaw Creek in order to dewater the jurisdictional stream,

creating dry conditions when the sewer excavations occurred. The project materials submitted to the City of Yakima had nothing to do with the planned damming of Shaw Creek and dewatering of the stream. The unlawful prescription demonstrated contempt for the rule of law by Mr. Bainter and Mr. Durant, for the entire permitting process was subject to judicial review by Judge Hahn within Superior Court. The unlawful prescription was issued prior to the Superior Court trial.

64. **2015** – Within Superior Court, Judge Hahn affirmed that Mr. Bainter had preemptively destroyed the environment of Shaw Creek. The City of Yakima was issued a LUPA injunction, reversing the issuance of the SEPA authorization and reversing the issuance of the Critical Area Permit. Mr. Bainter was required to restore the site of environmental destruction prior to obtaining new permits. As of 2017, Mr. Bainter has not lawfully restored the site of environmental crimes of 2012. Ms. Catherine Reed and Ecology know that the environment of Shaw Creek was preemptively destroyed in 2012 at the Bainter site. By reviewing the wetland study of July 2015, Catherine Reed knows that jurisdictional wetlands were destroyed at the Bainter site in 2012. By reviewing the WDFW letter (Bartrand; 2016), Catherine Reed knows that the jurisdictional Shaw Creek watercourse was unlawfully filled with excavation spoils in 2012. By performing Shaw Creek site visits, Catherine Reed knows that the waters of Shaw Creek were illegally relocated into a man-made ditch at the Bainter site (2012).

65. **2015** – In January 2015, Widener & Associates produced the January 2015 wetland study of Shaw Creek for Yakima County. At the Bainter site of Shaw Creek, Widener & Associates found no wetlands. In addition, forensic wetlands that were preemptively destroyed at the Bainter site were not addressed. And significant portions of the project area were not studied (i.e. not studied for the presence of wetlands). A single wetland, wetland A, was identified in the northwest portion of the project area. Catherine Reed and Ecology are aware of the Yakima County scheme to preemptively destroy Shaw Creek wetlands and

then create a Widener wetland study (i.e. January 2015) demonstrating that no wetlands existed along the course of Shaw Creek.

66. **2015** – The January 2015 wetland study was widely distributed by Yakima County. The flawed and erroneous January 2015 wetland study was delivered to FEMA, delivered to Ecology, delivered to the US Army Corp of Engineers, and disseminated to members of the public. During the ongoing NEPA process, this flawed January 2015 wetland report was the only wetland report disseminated by Yakima County.
67. **2015** – Ostensibly in May, 2015, the US Army Corp of Engineers formally rejected the January 2015 wetland report due to the fact that studies performed during the winter are flawed and inaccurate. So, Yakima County (Mr. Cliff Bennett) and Widener & Associates were made aware that the January 2015 wetland report had been rejected by the USACE; however, Yakima County did not withdraw the flawed and rejected January 2015 wetland report from FEMA. Instead, the flawed and rejected January 2015 wetland report was physically attached to the Environmental Assessment created by FEMA. Catherine Reed and Ecology are aware that the USACE rejected the content of the January 2015 wetland study.
68. **2015** – At the end of August, 2015, a second version of wetland report was created by Widener & Associates. Reportedly, the second version of wetland report was delivered to Yakima County during the first week of September 2015. Yakima County concealed the content of the second version of Widener wetland report during 2015, 2016, and into 2017. In March 2017, following a public record request, Yakima County released a copy of the second wetland report.
69. **October 2015** – Debbie Knaub of the US Army Corp of Engineers issued an ultimatum to Yakima County. The second wetland study must be delivered to the

US Army Corp of Engineers within 30 days.

70. **October 22, 2015** – On October 22, 2015, Widener & Associates delivered to the US Army Corp of Engineers the second wetland study for the Shaw Creek flood project. The content of the October 2015 wetland study was concealed from FEMA and concealed from members of the public. During the NEPA process, Yakima County concealed the content of the October 2015 wetland report. In addition, during the SEPA process for SEP2016-00029, Yakima County concealed the October 2015 wetland study from members of the public.
71. **October 2015** – The October 2015 wetland study affirmed that 58-jurisdictional wetlands would be destroyed as a result of the Shaw Creek flood project proposed by Yakima County. In addition, Yakima County and Widener & Associates unlawfully indicated that the OHWM (Ordinary High Water Mark) of the man-made ditch under unlawful use is the location of the OHWM of the jurisdictional Shaw Creek watercourse. And significant portions of the project site were never studied such as the western portion of Wide Hollow Creek. Furthermore, the entire course of the man-made ditch under unlawful use was assessed as being a jurisdictional wetland that is under the protection of the Federal Clean Water Act. The October 2015 wetland report failed to truthfully indicate that forensic wetlands exist at the Bainter site under tons of unlawful fill following preemptive habitat destruction in advance of planned development. Catherine Reed and Ecology are aware of the content of the October 2015 wetland study.
72. **December 2015** – On December 1, 2015, FEMA produced an Environmental Assessment with the January 2015 wetland study attached. A month later, FEMA produced a FONSI (i.e. indication that no significant impacts will occur). Catherine Reed and Ecology are aware that the Environmental Assessment contained only the attached, rejected, January 2015 wetland study and did not contain the October 2015 wetland study.

73. **2016** – Ecology issued to Yakima County a Centennial grant for the Shaw Creek flood control project. Use of a Centennial grant on a flood control project is barred by State law. Ostensibly, the issuance of the Centennial grant to excavate a flood control channel in the West Valley of Yakima is unlawful. In addition, Yakima County requested precisely \$351,000 for excavation of the groundwater ditch (i.e. Shaw Creek relocation channel) which is precisely the same amount of money requested from FEMA for the same project element. Yakima County appeared to be double-dipping, obtaining identical funding from two differing payment sources. Needless to say, a concern exists with respect to financial fraud. Within the Centennial grant, the roadside ditch to the south of Wide Hollow Rd. is noted as being a new watercourse for Wide Hollow Creek; ostensibly Yakima County has created new, secretive project plans to violate the Federal Clean Water Act by secretly relocating a jurisdictional stream into a ditch. And Yakima County indicates that the project will involve unlawful hyporheic zone disruption within Shaw Creek; NFIP regulations bar hyporheic zone disruption as proposed by Yakima County.
74. **2016** – In 2016, Yakima County prepared to obtain local permits beginning with issuance of a SEPA authorization for a project proposal. The project (Shaw Creek flood project) is nearly entirely within the jurisdiction of the City of Yakima; only minor project elements are within the jurisdiction of Yakima County.
75. **2016** – After receiving a copy of the October 2015 wetland report from Yakima County, the USACE and Ecology mandated revisions. In March 2016, a third version of the Shaw Creek wetland report was delivered to the USACE. Yakima County did not release a copy of the third version of wetland report to others. Members of the public have never seen this third version of Widener wetland report for Shaw Creek. Even Ecology officials may not possess the March 2016 version of the wetland study.

76. **2016** – Mr. Jeff Peters (City of Yakima) and Mr. Greg Bainter (Bainter Group LLC) created a scheme to reverse the LUPA injunction, barring issuance of a SEPA authorization and barring issuance of a critical area permit involving the Bainter site of Shaw Creek. Mr. Bainter wished to move forward with development after unresolved Clean Water Act violations. Separately, the City of Yakima and Yakima County wished to move forward with their development, the Shaw Creek flood control project. The scheme created by Mr. Jeff Peters and Mr. Greg Bainter involved Mr. Eric Bartrand (WDFW) and Ms. Catherine Reed (Ecology). Mr. Eric Bartrand and Ms. Catherine Reed would perform another site visit to Shaw Creek (Bainter site). Mr. Eric Bartrand would create an affirmation, in writing, in full support of Mr. Bainter. Similarly, Ms. Catherine Reed was expected to create a written affirmation of Mr. Bainter. Then Mr. Peters and the City of Yakima would introduce a motion within Superior Court to reverse the LUPA injunction. Wetlands at the Bainter site would remain filled. The jurisdictional Shaw Creek watercourse would remain filled. And water would continue to flow illegally within the man-made ditch under unlawful use at the Bainter site. Regardless, the scheme would result in a hoped-for reversal of the LUPA injunction.

77. **2016** – In June, 2016, Mr. Eric Bartrand (WDFW) and Ms. Catherine Reed (Ecology) performed a site visit to Shaw Creek (Bainter site). Mr. Bartrand and Ms. Reed took measurements of vegetated areas and of destroyed vegetation along the jurisdictional Shaw Creek watercourse (under tons of illegal fill). A written report was created by Mr. Bartrand that was a glowing affirmation of Mr. Bainter. However, within the text of the Bartrand letter, Mr. Bartrand recorded that Mr. Bainter had filled the jurisdictional Shaw Creek watercourse with excavation spoils in 2012. As such, Mr. Bartrand affirmed that Mr. Bainter had violated the Federal Clean Water Act in 2012.

78. **2016** - The written report created by Ms. Catherine Reed following the Bainter site visit was less supportive of Mr. Bainter. Ms. Catherine Reed indicated that

lawful one-to-one replacement of wetlands must be demonstrated by Mr. Bainter; as such, another formal wetland study of the Bainter site was mandated. Ms. Catherine Reed indicated that forensic wetlands may be buried under fill at the Bainter site.

79. **2016** – Evidence demonstrates that Ecology and the City of Yakima directed Bainter to Widener & Associates to perform wetland studies of the Bainter site, including an assessment of forensic wetlands that had been preemptively destroyed in 2012. Significant conflicts of interest were introduced when Widener & Associates began working for Mr. Bainter while, at the same time, were working for Yakima County. Widener & Associates had signed contracts valued at nearly \$50,000 to perform wetland studies of Shaw Creek and a wetland mitigation plan.

Mr. Bainter would be paying more money to Widener & Associates. The large sums of money given to Widener & Associates likely explains why the content of numerous wetland studies is unlawful; Widener & Associates has repeatedly identified the man-made ditch under unlawful use (Bainter site) as the location of the jurisdictional Shaw Creek watercourse. Widener & Associates officials, Yakima County officials, and Mr. Bainter must all use the regulatory and controlling Shaw Creek FEMA 100-year Floodplain maps to identify the location of the jurisdictional Shaw Creek watercourse. And the regulatory FEMA maps indicate that the man-made ditch is NOT the location of the jurisdictional Shaw Creek watercourse.

Yet Ecology and the City of Yakima referred Mr. Bainter to Widener & Associates, assuring that new wetland studies of the Bainter site would continue to demonstrate that the man-made ditch under unlawful use is the location of the jurisdictional Shaw Creek watercourse. In addition, Widener & Associates had unlawfully indicated that the entire course of the man-made ditch under unlawful use at the Bainter site is a jurisdictional wetland under the protection of the

Federal Clean Water Act. In essence, Widener & Associates has affirmed that there are “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-areas”; no such thing exists. The man-made ditch is nothing but a ditch being used illegally. The ditch is not a critical area. The ditch does not possess jurisdictional wetlands.

80. **July 2016** – In July 2016, Widener & Associates produced a Shaw Creek report for Mr. Bainter. The July 2016 report was dubbed a critical area study; however, the report was primarily a wetland study of the Bainter site. Widener & Associates had already produced a January 2015 wetland study of Shaw Creek, a October 2015 wetland study of Shaw Creek, and a March 2016 wetland study of Shaw Creek. Widener & Associates signed new contracts to study new portions of the project area (i.e. new wetland studies) and to create a wetland mitigation plan. The July 2016 wetland study of the Bainter site unlawfully indicated that the OHWM of the man-made ditch was the OHWM of the jurisdictional Shaw Creek watercourse. The July 2016 wetland study unlawfully indicated that the entire course of the man-made ditch under unlawful use was a jurisdictional wetland. The July 2016 wetland study affirmed the presence of forensic wetlands at the Bainter site that were unlawfully filled in 2012. Ostensibly, only one test-pit was performed in any wetland area of the site.

81. **2016** – Upon review of the July 2016 wetland study, Ms. Catherine Reed forwarded a copy to the USACE, thus participating in the scheme to prevent enforcement of the Federal Clean Water Act. Ostensibly, Ms. Catherine Reed delivered the July 2016 wetland report to the USACE in an effort to dupe USACE officials into believing that the man-made ditch under unlawful use is the location of the jurisdictional watercourse. By knowingly delivering a falsified wetland study of July 2016 to the USACE, Catherine Reed and Ecology participated in the scheme to prevent enforcement of the Federal Clean Water Act.



82. **2016** – Upon review of the July 2016 wetland study of the Bainter site, Ms. Catherine Reed affirmed that the test-pit studies were insufficient. Mr. Bainter and Widener & Associates were mandated to perform additional test-pits at the Bainter site. First, Mr. Bainter was directed to hire a surveyor to flag three transects. Second, the surveyor was to identify a surveyed easement for the sewer line since none existed. Third, new test pits were to be performed along the transects and along the surveyed utility easement. In essence, the July 2016 Widener wetland study was rejected by Ecology due to insufficient test-pits.
83. **July 15, 2016** – Mr. Cliff Bennett submitted preliminary application materials for SEP2016-00029 to the Yakima County planning department. The application materials included a copy of the October 2015 wetland report; this October 2015 wetland report was concealed by Yakima County during the SEPA process for SEP2016-00029.
84. **July 20, 2016** – An anonymous person created and submitted a SEPA checklist and site plans for SEP2016-00029. The application materials were not signed. And the only version of wetland report within application materials was the flawed and rejected January 2015 wetland report created by Widener & Associates for Yakima County.
85. **July 20, 2016** – The applicant/developer for SEP2016-00029 did not possess ownership or control of real property within the project area. As such, the applicant/developer did not possess the legal rights to perform the proposed project (SEP2016-00029).
86. **August 9, 2016** – On August 9, 2016, Mr. Byron Gumz determined that the application materials for SEP2016-00029 were “complete”. However, no person had signed the application materials as required by law. And the applicant/developer did not possess ownership or control of property within the project area. Plus, the only version of wetland report within the project files was

- the January 2015 wetland report. Mr. Byron Gumz possessed a copy of the October 2015 wetland report; however, Mr. Byron Gumz and Yakima County concealed the October 2015 wetland report for over two months of the SEPA process.
87. **September 2016** – Yakima County issued a formal legal notice to members of the public informing the public of a 14-day SEPA appeal window following issuance of a SEPA authorization for SEP2016-00029. Note that Yakima County subsequently reversed the position that members of the public possessed a 14-day SEPA appeal window. In fact, Yakima County issued a subsequent legal notice informing the public that no appeal was allowed under SEPA.
88. **October 2016** – At the end of the commenting window for SEP2016-00029, Mr. Cliff Bennett delivered to Mr. Byron Gumz another copy of the October 2015 wetland report. Mr. Byron Gumz then unlawfully introduced the October 2015 wetland report into the project files for SEP2016-00029; the belated introduction of the October 2015 wetland report into the project files for SEP2016-00029 was a flagrant violation of the State Growth Management Act.
89. **October 2016** – In October 2016, Mr. Mike Leita (Yakima County commissioner) signed a letter to Matthew Seaman indicating that the LUPA injunction, barring issuance of a SEPA authorization for Shaw Creek was “irrelevant” and did not apply to Yakima County officials who projected authority into the City of Yakima.
90. **October 2016** – In October 2016, Ms. Gwen Clear (Ecology) submitted a commenting letter for SEP2016-00029. Ms. Clear (Ecology) affirmed that Yakima County concealed the content of the October 2015 wetland report during commenting windows for SEP2016-00029. Ms. Clear indicated that the October 2015 wetland report affirmed the planned destruction of wetland areas (i.e. 58-jurisdictional wetlands) that would be considered a significant adverse

environmental impact; as such, Ms. Clear (Ecology) affirmed that Yakima County shall not issue a Final SEPA DNS. Rather, a mitigated SEPA DNS may be appropriate when a wetland mitigation plan is created and adopted.

91. **November 4, 2016** – Copies of the draft (incomplete) Final SEPA DNS for SEP2016-00029 were disseminated to Yakima County officials for review. Yakima County officials who received the draft, incomplete Final SEPA DNS for SEP2016-00029 included Mr. Paul McIlrath and Mr. Lynn Deitrick. Mr. Deitrick did make revisions to the incomplete Final SEPA DNS for SEP2016-00029.

When receiving and reviewing the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials became aware that Yakima County had concealed the October 2015 wetland report during the SEPA process. . When receiving and reviewing the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials became aware that Yakima County was performing a flagrant violation of the State Growth Management Act. . When receiving and reviewing the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials became aware that Yakima County was participating in a scheme to prevent enforcement of the Federal Clean Water Act. When receiving and reviewing the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials became aware that Yakima County was participating in a scheme to gain wealth resulting from violations of the Federal Clean Water Act.

In addition, when receiving and reviewing the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials became aware that Yakima County was failing to lawfully include required appeal “date” and appeal “location” information within the content of the SEPA DNS. Furthermore, Yakima County officials were aware that they were ignoring the letter from Ecology, disallowing the issuance of a SEPA DNS for SEP2016-00029. Within the content of the incomplete Final SEPA DNS for SEP2016-00029, Yakima County was unlawfully indicating that a man-made ditch under unlawful use was the location

of the jurisdictional Shaw Creek watercourse.

Within the content of the incomplete Final SEPA DNS for SEP2016-00029, Yakima County was unlawfully indicating that a man-made ditch under unlawful use was, in entirety, a “man-made-ditch-under-unlawful-use-jurisdictional-wetland-critical-area”; such an indication is nonsense and unlawful. When receiving and reviewing the incomplete Final SEPA DNS for SEP2016-00029, Yakima County officials became aware that Yakima County was demonstrating contempt for the rule of law by ignoring the LUPA injunction barring issuance of a SEPA authorization for a development project involving Shaw Creek (Bainter site).

**92. November 16, 2016** – On November 16, 2016, Mr. Thomas Carroll signed the incomplete Final SEPA DNS for SEP2016-00029. Numerous violations of law occurred when Mr. Thomas Carroll signed the incomplete Final SEPA DNS for SEP2016-00029 including the following: Yakima County processed and approved a SEPA application that was not signed by any person. SEPA (State law) requires the applicant/developer to sign the application materials. Yakima County processed and approved a SEPA application for land not under ownership or control of the applicant/developer. State law requires the applicant/developer to have ownership or control of real property (i.e. real property within the project site for SEP2016-00029).

The identify of the individual who submitted the application materials on July 20, 2016 is unknown, yet Yakima County still processed the SEPA application and issued a Final SEPA DNS. State law requires the identity of the applicant/developer to be known. The planning file for SEP2016-00029 was determined to be “complete” on August 9, 2016 without the October 2015 wetland study, yet the October 2015 wetland study was incorporated by reference into the incomplete Final SEPA DNS for SEP2016-00029. SEPA was violated since the October 2015 wetland report should have been within the content of the

planning file on August 9, 2016. During commenting windows for SEP2016-00029, Yakima County officials knowingly concealed the content of the October 2015 wetland report from members of the public.

By concealing the October 2015 wetland report, Yakima County officials knowingly performed a flagrant violation of the State Growth Management Act. By concealing the October 2015 wetland report, Yakima County officials knowingly participated in a scheme to prevent enforcement of the Federal Clean Water Act. By concealing the October 2015 wetland report, Yakima County officials knowingly participated in a scheme to achieve wealth as a result of violations of the Federal Clean Water Act. By concealing the October 2015 wetland report, Yakima County officials knowingly violated critical areas ordinances indicating that the man-made ditch does not possess regulated wetlands that are under the protection of the Federal Clean Water Act.

Yakima County officials violated State law by failing to include appeal “date” and appeal “location” information within the content of the incomplete Final SEPA DNS for SEP2016-00029. Yakima County officials demonstrated contempt for the rule of law by ignoring a LUPA injunction barring issuance of a SEPA authorization for the project proposed by the applicant/developer. Yakima County officials failed to include lawful lead agency agreements within planning files for SEP2016-00029; SEPA (State law) requires lead agency agreements between agencies with jurisdiction for SEP2016-00029. Yakima County officials preemptively destroyed the environment of Shaw Creek prior to submitting SEPA application materials for SEP2016-00029. The preemptive habitat destruction of Shaw Creek included unlawful filling of jurisdictional wetlands, unlawful filling of the jurisdictional Shaw Creek watercourse, and unlawful relocation of Shaw Creek into a man-made ditch.

In essence, Yakima County officials participated in pre-planned violations of the Federal Clean Water Act prior to submitting application materials for SEP2016-

00029. Use of the prescription scheme by Yakima County served to violate NFIP regulations (Federal law) and violate the Federal Clean Water Act. Yakima County officials participated in a secretive, corrupt, and unlawful prescription scheme that was used to pre-plan and implement preemptive habitat destruction of Shaw Creek prior to submission of SEPA application materials for SEP2016-00029.

The secretive, corrupt, and unlawful prescription scheme has been used by Yakima County officials to repeatedly violate the Federal Clean Water Act involving Shaw Creek and Wide Hollow Creek. Yakima County has not yet dismantled the secretive, corrupt, and unlawful prescription scheme. Use of the prescription scheme by Yakima County served to violate NFIP regulations (Federal law) and violate the Federal Clean Water Act.

Yakima County officials did not, as required by law, physically attach copies of all documents incorporated by reference (i.e. Yakima County failed to attach to the incomplete Final SEPA DNS for SEP2016-00029 copies of all documents that were incorporated by reference). Yakima County officials approved the unlawful use of imazapyr, in violation of FIFRA, to destroy 760 trees along Wide Hollow Creek; in so doing, Yakima County officials indicated that the planned destruction of 760 trees was not considered a significant adverse environmental impact.

Yakima County officials approved unlawful hyporheic zone disruption, leading to the unlawful discharge of sewage, lead, and arsenic into the drinking water supply of Yakima. The planned hyporheic zone disruption represents a violation of NFIP regulations (Federal law) and the MTCA (State law). Yakima County officials approved the unlawful creation of insufficient Riparian Habitat Zones along Shaw Creek and along Wide Hollow Creek. The unlawfully sized and unlawfully vegetated Riparian Habitat Zones, as planned by Yakima County, represent violations of NFIP regulations (Federal law). Yakima County officials approved the destruction and elimination of large portions of the Shaw Creek FEMA 100-

year floodplain without lawful compensatory storage as mandated by Federal law (NFIP regulations).

Yakima County officials approved a SEPA authorization for SEP2016-00029 without requiring the applicant/developer to perform sufficient wetland studies; as such, Yakima County officials violated State law (SEPA) and violated the critical areas ordinances. Significant portions of the project area were not studied for the presence of wetlands. Shaw Creek forensic wetlands were not incorporated into project materials. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans to violate the Federal Clean Water Act by relocating Wide Hollow Creek into a roadside ditch.

Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans to violate the Federal Clean Water Act by dewatering Wide Hollow Creek by means of a retention pond. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans to use the access road to the east of the Shaw Creek relocation channel as a dike; at the same time, Yakima County has failed to truthfully inform the USACE that the access roadway will be a dike and subject to inspection by the USACE.

Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans to use Wide Hollow Rd. as a dike; at the same time, Yakima County has failed to truthfully inform the USACE that Wide Hollow Rd. will be a dike and subject to inspection by the USACE. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans fill a portion of Wide Hollow Creek; as such, the applicant/developer possesses secretive project plans to violate

the Federal Clean Water Act. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans fill a portion of Wide Hollow Creek; as such, the applicant/developer possesses secretive project plans to violate the Federal Endangered Species Act (filling critical habitat for mid-Columbia steelhead).

Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans relocate a portion of Wide Hollow Creek; as such, the applicant/developer possesses secretive project plans to violate the Federal Endangered Species Act (i.e. relocation of a jurisdictional watercourse that is critical habitat for mid-Columbia steelhead). Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer possesses secretive plans to dewater Wide Hollow Creek and dewater critical habitat for mid-Columbia steelhead; as such, the applicant/developer possesses secretive project plans to violate the Federal Endangered Species Act (i.e dewater a jurisdictional watercourse that is critical habitat for mid-Columbia steelhead).

Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer will be unlawfully using a Centennial grant for a flood control project. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer will be unlawfully using a Centennial grant earmarked fund of \$351,000 for the construction of the Shaw Creek relocation channel while, at the same time, possessing a \$351,000 earmarked fund within the FEMA PDM grant to create the Shaw Creek relocation channel. Ostensibly, Yakima County is participating in financial fraud by obtaining precisely \$351,000 from two different grants for the same project element. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer will be destroying



“wetland A” without divulging the planned destruction of this wetland within project materials for SEP2016-00029.

Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer will be unlawfully relocating floodways for the purpose of real estate development. Yakima County officials approved a SEPA authorization for SEP2016-00029 despite possessing knowledge that the applicant/developer was paying planning officials to perform the environmental review. Specifically, the applicant/developer was providing payments to Mr. Byron Gumz from FC 3301. By paying Mr. Gumz, the applicant/developer introduced significant conflicts of interest for planning officials tasked with the lawful review of adverse environmental impacts associated with the proposed project SEP2016-00029.

Yakima County officials misidentified the project site location as “Loren Place” on information provided by Yakima County to members of the public. Yakima County officials provided only fragments of the SEPA checklist for inspection by members of the public during commenting windows. Yakima County officials disseminated a false and misleading site plan for SEP2016-00029.

93. **December 2016** – A judicial appeal is filed within Superior Court by Matthew Seaman, challenging the issuance of the incomplete Final SEPA DNS for SEP2016-00029.
94. **February 21, 2017** – Overbank flooding from the man-made ditch under unlawful use (Bainter site) resulted in significant flooding of the adjacent community. The flooding of the Cottonwood Grove subdivision was the direct result of Clean Water Act violations at the Bainter site of Shaw Creek.
95. **February and March of 2017** – Development occurred at the Bainter site of Shaw Creek during the flood-fight. Heavy equipment was used to excavate within

a newly identified floodway. Sand bagging was performed along the south bank of the man-made ditch under unlawful use. Permits were not issued for the development at the Bainter site of Shaw Creek (and the man-made ditch).

96. **February and March of 2017** – Homeowners within the adjacent community (i.e. Cottonwood Grove subdivision) used pumps to remove floodwaters during 2-3 weeks following the initial flood event.

97. **March 2017** – During the flood-fight of 2017 and while the Bainter site was fully saturated, survey flags for transects were placed on site, ostensibly for the purpose of new test-pits by Widener wetland specialists. Such an action by Mr. Bainter demonstrates a disregard for the adjacent community that was experiencing flooding from the Bainter site while he (Bainter) was engaged with plans for development of the site. Mr. Greg Bainter (Bainter Group LLC) is considered a PLP (potentially liable party) for flood-related costs incurred by the adjacent community as a result of flooding from the man-made ditch under unlawful use.

98. **2017** – Following the placement of survey flags and the recording of a utility easement, Mr. Bainter was mandated (per Ecology) to perform new test-pits at the site and then generate a new version of wetland report. The 2017 Shaw Creek wetland report, created by Widener & Associates for Bainter, is to be submitted to the City of Yakima, submitted to Ecology, and submitted to the USACE. The City of Yakima, Ecology, and the USACE are then expected to unlawfully affirm that the man-made ditch under unlawful use (Bainter site) is the location of the jurisdictional Shaw Creek watercourse. Catherine Reed is aware that new survey flags were used to identify transects at the Bainter site to identify wetland areas following the flood-event of 2017.

99. **April 2017** – Mr. Greg Bainter, Mrs. Adele Bainter, and Bainter Group LLC are named as defendants in a citizen lawsuit, filed under the Federal Clean Water Act for well-documented environmental crimes of 2012 at the Bainter site. The Shaw

Creek jurisdictional watercourse was filled with excavation spoils. Jurisdictional Shaw Creek wetlands were destroyed and filled. And the Shaw Creek watercourse, without issuance of permits, was relocated into a man-made ditch. Other parties facilitated the Clean Water Act violations. Other parties also participated in the scheme to prevent enforcement of the Federal Clean Water Act. Other parties also participated in the scheme to achieve wealth resulting from violations of the Federal Clean Water Act.

***Discussion of Ms. Catherine Reed (Ecology):***

Ordinarily, Ms. Catherine Reed and Ecology would be in the role of enforcing the Federal Clean Water Act. Under the current scenario, Ms. Catherine Reed and Ecology are in the role of facilitating violations of the Federal Clean Water Act following well-documented environmental crimes at the Bainter site in 2012. Ecology and Yakima County are proponents with the proposed flood control project that was facilitated by the preemptive destruction of jurisdictional Shaw Creek wetlands. Yakima County officials pre-planned the Clean Water Act violations of 2012 by using the corrupt and unlawful prescription scheme. Catherine Reed and Ecology have repeatedly failed to enforce the Federal Clean Water Act despite possession of evidence that jurisdictional wetlands were filled. And Ecology also is aware that the jurisdictional watercourse was illegally filled at the Bainter site in 2012. Furthermore, the jurisdictional Shaw Creek watercourse was illegally relocated into a man-made ditch in 2012 without issuance of lawful permits.

Ms. Catherine Reed has frankly ignored violations of the Federal Clean Water Act at the Bainter site. However, five years after the Bainter environmental crimes, Catherine Reed and Ecology have evolved into a position where Mr. Bainter must demonstrate that he has lawfully replaced jurisdictional wetlands in a one-to-one fashion. Yet Catherine Reed has failed to truthfully indicate that the destruction of jurisdictional wetlands at the Bainter site (2012) was, in fact, a violation of the Federal Clean Water Act. Ecology has taken a position that allows for violations of the Federal Clean Water Act, ignoring that Shaw Creek was relocated into a man-made ditch without issuance of lawful permits. At

the same time, Ecology is requiring a demonstration that destroyed wetlands are replaced in a one-to-one fashion.

While Ecology is requiring wetland replacement, Ecology is unlawfully affirming that the entire course of the man-made ditch under unlawful use is the location of jurisdictional wetlands. So Ecology is unlawfully affirming that Mr. Bainter can destroy wetlands in 2012 and then demonstrate he “replaced” the destroyed wetlands within the man-made ditch under unlawful use.

Ordinarily, Ecology would be expected to issue a notice of violation to Mr. Bainter for well-documented violations of the Federal Clean Water Act; however, Ecology has simply ignored the Shaw Creek Clean Water Act violations of 2012. Catherine Reed and Ecology do not want Shaw Creek environmental restoration following pre-planned violations of the Federal Clean Water Act. Instead, Catherine Reed and Ecology want Yakima County to utilize several grants to relocate Shaw Creek into a groundwater ditch without first requiring compliance with the Federal Clean Water Act at the Bainter site. In essence, Catherine Reed and Ecology are in a position to allow Yakima County officials to pre-plan Shaw Creek Clean Water Act violations, preemptively destroy jurisdictional wetlands, and then move forward with development. Ecology is allowing Yakima County to preemptively destroy the environment and then proceed with site development.

In 2016 and 2017, Ms. Catherine Reed and Ecology became active participants in the scheme to prevent enforcement of the Federal Clean Water Act. Mr. Bainter was directed by Ecology to contact Widener & Associates to perform new wetland studies involving Shaw Creek. Widener & Associates possesses significant conflicts of interests when performing wetland studies for Mr. Bainter since this corporation has already produced several wetland studies for Yakima County. Widener & Associates is significantly influenced by the payment of \$50,000.00 from Yakima County to declare the man-made ditch under unlawful use as the location of the jurisdictional Shaw Creek watercourse. Rather than complying with the law, indicating that the man-made ditch is not the location of the jurisdictional watercourse, Widener & Associates would create wetland

studies for Mr. Bainter that unlawfully declare the man-made ditch as the location of the jurisdictional watercourse.

Ms. Catherine Reed and Ecology received from Mr. Bainter a falsified and unlawful wetland study in July 2016 where the man-made ditch under unlawful use was indicated as being the location of the jurisdictional Shaw Creek watercourse. And the July 2016 wetland study unlawfully indicated that the entire course of the man-made ditch was a jurisdictional wetland. Catherine Reed and Ecology are aware that the July 2016 wetland report is false and misleading; regardless, Catherine Reed delivered the false and misleading July 2016 wetland study to the USACE. As such, Catherine Reed and Ecology attempted to misinform USACE officials about the location of the jurisdictional Shaw Creek watercourse. Furthermore, Catherine Reed and Ecology participated in the scheme to prevent enforcement of the Federal Clean Water Act.

Ms. Catherine Reed and Ecology have repeatedly assessed the Bainter site of Shaw Creek by means of site visits to inspect wetlands along Shaw Creek. Rather than enforcing the Federal Clean Water Act, requiring lawful site restoration, Ecology has allowed for the continued, unlawful flows of water within the man-made ditch under unlawful use (Bainter site). After nearly five years of unlawful use of the man-made ditch, overbank flooding occurred at the Bainter site. On February 21, 2017, the carrying capacity of the man-made ditch was exceeded; flood flows moved overland to the south and to the east, causing extensive flooding within the Cottonwood Grove subdivision.

By failing to enforce the Federal Clean Water Act, requiring abatement of the man-made ditch (Bainter site), Ecology is one of several parties with liability for flood-related costs. For one month following the flooding of the Cottonwood Grove subdivision, clean-up efforts continued. The use of heavy equipment was required for the flood-fight. Emergency crews from the City of Yakima and from Yakima County responded to fight ongoing flooding. By relocating Shaw Creek into a man-made ditch with insufficient conveyance capacity, Mr. Bainter and others caused the man-made flood of February 21, 2017. By failing to enforce the Federal Clean Water Act, Ecology possesses significant liability for the flood-related costs.

Ms. Catherine Reed and Ecology possess a mandate to enforce the Federal Clean Water Act. No individual, no corporation, and no governmental agency is lawfully allowed to relocate a jurisdictional watercourse, such as Shaw Creek, without issuance of a COE 404 Fill & Dredge permit. Similarly, no individual, no corporation, and no governmental agency is lawfully allowed to fill jurisdictional Shaw Creek wetlands without issuance of a COE 404 Fill & Dredge permit. The filling of the jurisdictional Shaw Creek watercourse also requires issuance of a COE 404 Fill & Dredge permit. Ms. Catherine Reed and Ecology know that the required local permits and Federal permits were not issued at the time of Shaw Creek Clean Water Act violations in 2012.

Ms. Catherine Reed and Ecology have simply ignored and allowed the continued use of the man-made ditch under unlawful use (Bainter site); no enforcement of the Federal Clean Water Act has occurred. Ms. Catherine Reed and Ecology have failed to require the removal of unlawful fill from the jurisdictional Shaw Creek watercourse and from the jurisdictional Shaw Creek wetlands. Here too, the Clean Water Act enforcement has been ignored. The focus of attention by Ms. Catherine Reed and Ecology has been confined to the existence of wetlands at the Bainter site of Shaw Creek. But the role of Ms. Reed and Ecology with the assessment of jurisdictional wetlands along Shaw Creek has veered off of legal pathways.

At the Bainter site of Shaw Creek, a jurisdictional wetland was identified by Fulcrum consultants in 2013; Ms. Catherine Reed (Ecology) repeatedly affirmed that the only jurisdictional wetland at the Bainter site of Shaw Creek was the Fulcrum wetlands. Ms. Reed affirmed that no other wetlands existed at the Bainter site. Between 2013 and 2016, Ms. Reed and Ecology affirmed that the only wetlands at the Bainter site were the wetlands identified by Fulcrum consultants. Per Reed and Ecology, forensic wetlands did not exist under tons of fill at the Bainter site. Per Reed and Ecology, the course of the man-made ditch under unlawful use was not identified as a jurisdictional wetland.

However, Ms. Catherine Reed and Ecology received a Widener wetland and watercourse study of July, 2016 that was produced for Mr. Bainter; the July 2016 study indicated that

forensic wetlands existed under fill at the Bainter site. Furthermore, the entire course of the man-made ditch under unlawful use was identified as a jurisdictional wetland under the protection of the Federal Clean Water Act. The course of the man-made ditch under unlawful use was unlawfully identified as the site of the jurisdictional Shaw Creek watercourse despite the fact that the ditch is located outside of the charted floodway and outside of the Shaw Creek FEMA 100-year Floodplain. City of Yakima officials indicate that the ditch is not a critical area; yet the July 2016 study unlawfully states that the ditch at the Bainter site is a critical area, a jurisdictional watercourse, with jurisdictional wetland critical areas. Ms. Reed and Ecology affirmed the findings of the July 2016 wetland and watercourse study. Furthermore, Ms. Catherine Reed (Ecology) delivered the July 2016 wetland and watercourse study to officials at the USACE in an effort to dupe Federal officials at the USACE into believing that the location of the man-made ditch is the location of the jurisdictional Shaw Creek watercourse.

Ms. Catherine Reed and Ecology participated in the scheme to prevent enforcement of the Federal Clean Water Act by knowingly delivering a falsified and illegal July 2016 wetland and watercourse study to the US Army Corp of Engineers. Rather than truthfully informing the USACE that the waters of Shaw Creek were illegally relocated into a man-made ditch at the Bainter site of Shaw Creek, Ms. Catherine Reed and Ecology have attempted to mislead USACE officials by means of a falsified July 2016 wetland and watercourse study. Ms. Catherine Reed and Ecology know that Clean Water Act violations occurred at the Bainter site in 2012, causing waters to flow within the man-made ditch. Instead of enforcing the Federal Clean Water Act, Ms. Catherine Reed and Ecology have knowingly participated in the scheme to prevent enforcement of the Federal Clean Water Act.